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QUESTIONS OF MORAL THEOLOGY

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BY

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CONTENTS

	PAGE
The Just Price	15
Value in Moral Theology and Political Economy	33
Unearned Increment and Title by Accession	54
Ownership and Railway Fares	68
Liberalism and Usury	78
The Sum Required for a Grave Sin of Theft	99
The Theology of Stolen Goods	116
Secret Commissions in Trade	130
Deals in Options and Futures	145
The Moral Aspect of "Stockwatering"	159
Bankruptcy and Conscience	176
Modern Sociology	191
English Socialism and Religion	233
Eugenics and Moral Theology	252
Civil Law and Conscience	272
Questions Concerning Intention	289
Dr. McDonald's "Principles of Moral Science"	306
Scruples	329
The Doctrine on Sacrilege in Moral Theology	343
Is an Act of Contrition Difficult?	355
Repetition of Extreme Unction	368
Dr. Richard Hall's Theory of Morals	388
The Task of Liberal Theology	408

PREFACE

THE doctrine taught by the Catholic Church is vitally necessary for the modern world. We have all been forced to see as with our own eyes what even the highest human culture becomes when it is deprived of the salt of Christian teaching. During the years in which I was engaged in teaching Moral Theology this truth was constantly brought home to me. From time to time I wrote down my thoughts on some particular question of Moral Theology and sent the result to one of the Catholic magazines. The chief portion of this book consists of such articles. I hope that they will illustrate the truth which I have just stated, and that they will help to bring back to public knowledge truths that should never have been forgotten. Other articles treat of questions which were either specially difficult, or which formed subjects of controversy, but all of them treat of matters of importance, unless I am mistaken. They are here reproduced not only for the clergy, but for the intelligent laity, both Catholic and non-Catholic.

My thanks are due to the proprietors of the *Irish Ecclesiastical Record,* the *Irish Theological Quarterly,* and of the *American Ecclesiastical Review* for permission to republish the articles which belong to them respectively.

QUESTIONS OF MORAL THEOLOGY

I

THE JUST PRICE

From many sides there are indications that the gospels of revolt are being found wanting by experience and that a reaction in favor of older and saner doctrines has set in. As an example of this movement we propose in this paper to take the doctrine of the just price of services and commodities. It will be sufficient for our purpose to indicate the salient features of the revolt and the return to the sounder views which were once prevalent. We may thus perhaps be able to help things to move in the right direction.

Until comparatively modern times it was held universally that societies of men are chiefly held together by the virtues of justice and charity. Justice especially was considered the solid foundation of States, without which it was impossible for them to prosper or even to remain stable and permanent. Whatever may have been the practice in particular cases and at particular times the ideal at least was always upheld that justice must regulate the dealings of rulers with the governed, and the mutual relations of the gov-

erned among themselves. The doctrine concerning the nature of justice was that of Aristotle, who taught that it consists in a mean between two extremes, like other moral virtues. Just as liberality is a mean between the two vices of stinginess and prodigality, so justice is a mean between excess and defect. Justice, however, differs from other virtues in this — that while the mean in other virtues is a mean between two vicious habits in the virtuous man, justice has also for its mean the debt due to somebody else. Other people have certain definite rights — the right to live without let or hindrance, the right to protection at the hands of the public authority, the right to have and to enjoy what belongs to them — certain definite rights arising from contract. Justice requires that those and all other rights should be respected, that what is due to another should be rendered unto him. Not more than is due nor less, but just what is due. Justice, therefore, consists in an equality, a balance between what a person has a right to and the satisfaction of that right on the part of others. As long as each one gives to all others what they have a right to, justice is observed, no one has a legitimate ground of complaint, all are satisfied and contented, the State rests in security on the peace and concord of its citizens.

The justice that governs the relations of individuals among themselves was called corrective justice by Aristotle because it corrected unjust inequalities by making restitution for violations of right. It was called commutative justice by the schoolmen because it had to do chiefly with buying and selling and other

contracts or exchanges. Justice regulates such transactions, and consists in this — that if a man buys a house he is in possession of the same value after the completion of the bargain as he was before. If justice has been observed he has not given too much for the house nor too little. The mean has been observed, and justice has been done. "But when," says Aristotle, "by buying and selling, men have got neither more nor less than they had at first, but exactly the same, then they say that they have their own, and have neither lost nor gained. And hence corrective justice is a mean between the gain and the loss which are produced not willingly, but unintentionally, and is such that each party has the same both before the transaction and after it." [1]

Of course the great philosopher was not so foolish as to suppose that nothing whatever is gained by the contract. If that were the case there would be no motive for making the exchange at all. As he shows elsewhere,[2] Aristotle was fully aware of the two kinds of value which every commodity has in society, the value in use and the value in exchange. A man who sells wine which he does not want, and which he cannot use for money which he does want, makes a gain as to the value in use; but if he only got the just price he only got the equivalent of his wine as far as the value in exchange is concerned. In order that exchange may be possible and that commodities may have exchange value, some sort of society must have been constituted. As Aristotle says: "Now it is plain that barter could have no place in the first com-

[1] *Ethics*, V., 4. [2] *Politics*, I., c. 9.

munity, that is to say, in the household; but must have begun when the number of those who composed the community came to be enlarged; for the former of these had all things the same and in common; but those who came to be separated had in common many other things which both parties were obliged to exchange as their wants arose." [3]

Value in exchange, then, is given to commodities by the fact that there are other men who are willing and able to give other commodities of value for them. How much they are willing to give will not depend upon the value in use which the commodity may have for themselves or its present owner, or for any particular individual. If one be starving a loaf of bread will be worth more to him than all the gold of Midas, but its value to him will not measure its value in exchange. This value in exchange will be determined by what the members of the community at the time are prepared to give for a loaf of bread. It will be determined by the social estimate of its utility for the support of life and its scarcity. It will not depend upon its intrinsic perfection, else a mouse would be more valuable than the corn which it eats. It will depend on its capacity to satisfy the wants and desires of the people with whom commercial relations are possible and practicable.

All this, which is according to the express teaching of the great Greek philosopher, shows that Aristotle considered it a matter of justice to keep to what we call a fair and reasonable price in buying and selling. Then, as now, traders were apt to evade this ethical

[3] *Politics*, I., c. 9.

law, and on that account trade and traders were held in small esteem by respectable men. Plato only admitted them into his Republic because he knew that they were necessary, but in an interesting passage he tells us what should be done to prevent traders doing injury to the commonwealth and to prevent their sordid occupation injuring their own characters. "And therefore," he says, "in respect of the multifarious occupations of retail trade, that is to say, in respect of such of them as are allowed to remain, because they seem to be quite necessary in a State — about these the guardians of the law should meet and take counsel with those who have experience of the several kinds of retail trade, as we before commanded, concerning adulteration (which is a matter akin to this), and when they meet they shall consider what amount of receipts after deducting expenses will produce a moderate gain, and they shall fix in writing and strictly maintain what they find to be the right percentage of profit; this should be done by the warders of the agora, and by the warders of the city, and by the warders of the country. And so retail trade will benefit every one, and do the least possible injury to those in the State who practise it." [4]

In the third book of his *De Officiis*,[5] Cicero has a very interesting discussion on certain ethical questions connected with trade. He tells us that they were cases of conscience discussed among the Stoics. One is whether a corn merchant who is selling his corn at famine prices, but who knows that abundant supplies are close at hand and will shortly arrive, is

[4] *Laws*, p. 491. [5] C. 12.

bound in conscience to make the fact known to the buyers. Another is whether the owner of an insanitary house which he wishes to sell is bound in conscience to make known the defective drainage to intending buyers. Cicero himself takes the strict view in both cases. He says: "That corn merchant, then, seems to me to be bound not to practise concealment on the Rhodians, nor this house-seller on the purchasers. For it is not practising concealment if you should be silent about anything; but when for the sake of your own emolument you wish those, whose interest it is to know that which you know, to remain in ignorance. Now, as to this sort of concealment, who does not see what kind of thing it is, and what kind of a man will practise it? Certainly not an open, not a single-minded, not an ingenuous, not a just, not a good man; but rather a wily, close, artful, deceitful, knavish, crafty, double-dealing, evasive fellow. Is it not inexpedient to expose ourselves to the imputations of so many vices, and even more?"

I quote these words not because I think Cicero's opinion on this question the right one, but because the passage shows the attitude of a Roman gentleman and of one who took a keen interest in ethical questions with regard to fair dealing and the just price of commodities. If Cicero and those to whom he so confidently appealed had in their minds no definite standard of what was a just price to give for a commodity the whole passage is meaningless.

St. Thomas Aquinas and Catholic theologians generally have followed and appropriated the Aristo-

telian doctrine on justice and on the just price. In the question of the *Summa*,[6] where St. Thomas professedly treats of the just price of commodities, he quotes both Aristotle and Cicero, and by giving as the reason for his decision the great and primary maxim of the natural law — *Whatsoever you would that men should do to you, do you also to them* — he shows that, according to his ideas, the question of the just price was one of natural law and natural reason. The words, indeed, were uttered by Our Lord, but that fact does not make them merely positive precept; much of Our Lord's teaching is also that of natural reason. It may be added that common sense and English law both uphold the doctrine of the just price. Buyers of commodities who are fit to go to market know what the fair price is of the articles which they wish to purchase, and sellers know when they are giving fair value for the money which they receive. The Sale of Goods Act, 1893, sec. 8, sub-sec. (2) prescribes: "Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case." This obviously supposes that there is such a thing as a reasonable price for goods — a price, that is, which right reason approves in the case. Price in other words is not something which is altogether indeterminate, subjective, and arbitrary. There is a price for everything that comes into commerce, not necessarily fixed and determined to the last farthing, but

[6] 2–2, q. 77, a. 1.

ascertainable within fairly definite limits. It is the reasonable price, not too high nor too low, the mean between excess and defect, the just price, the fair equivalent in money for the goods. What that price is is a question of fact, says the law — a question of fact which depends upon the circumstances of each individual case, and which can be settled without much difficulty by a jury of honest and competent men.

All this is but the brief exposition of the teaching of Catholic moral theology on the famous question of the just price — teaching which St. Thomas and the scholastics derived from Aristotle's doctrine on justice, and which they handed down to their modern successors. It was necessary to be thus explicit in order to have before our eyes a standard by which to judge the worth of the assertions of the liberal school of political economy.

According to the teaching of this school a seller always tried to sell in the dearest market and a buyer tried to buy in the cheapest. The price below which the one would not sink and that above which the other would not rise was fixed by the subjective and individual valuations of the utility of the goods to the seller and buyer respectively. The actual price at which the goods were sold depended upon the play of supply and demand at the place and time in question. Competition among buyers and sellers and of buyers against sellers settled the actual price which the goods fetched. The law of supply and demand was a law of nature, as inevitable as nature's physical laws, and it was as useless for the State to attempt to interfere with economic laws of this kind

as with the law of gravitation. Workmen were a necessary factor of production, an essential portion of the productive machinery, and the price of their labor was regulated by the same great law as that which regulated the price of the raw material which they worked up into saleable goods. The business man here, too, bought in the cheapest market and sold in the dearest; the price in the one case was what he was compelled to give, in the other it was what he could get. The old scholastic theory of the just price of commodities was hopelessly antiquated and even absurd. Even the historical school of economists followed the prevailing doctrine on this point. Dr. W. Cunningham writes: "In accordance with current modes of thought [the scholastic theologians] tried to determine an ideal standard which should be realized in particular transactions, and sought for a definite conception of a 'just price'; the practical enquiries then resolved themselves into means for discovering the just price of each particular thing. From the modern point of view this whole quest was quite chimerical; prices are always fluctuating, and must from their very nature fluctuate. . . . We know, too, that the commodity used for money must vary in value from time to time, and that therefore there must be continual fluctuations not only in values but in prices as well. The attempt to determine an ideal price implies that there can and ought to be stability in relative values and stability in the measure of values — which is absurd.

"The medieval doctrine and its application rested upon another assumption, which we have outlived.

Value is not a quality which inheres in an object, so that it shall have the same worth for everybody; it arises from the personal preferences and needs of different people, some of whom desire a given thing more and some less, some of whom want to use it in one way and some in another. Value is not objective — intrinsic in the object — but subjective, varying with the desires and intentions of the possessors or would-be possessors; and because it is thus subjective there cannot be a definite ideal value, which every article ought to possess, and still less a just price as the measure of that ideal value." [7]

It is obvious that when Dr. Cunningham wrote this he had no true conception of what the doctrine of the just price was and is. All that that doctrine asserts is that there should be and that there is an equivalence in social value between a commodity and its price at a certain time and in a certain place; it says nothing whatever about the stability or permanence of price at different times and at different places. While maintaining that the just price does not depend on the valuation of the individual buyer or seller, the medieval doctors did not dream of making it intrinsic to the object. They quoted with approval St. Augustine, who centuries before had pointed out that though mice and fleas are more perfect things in the order of nature than bread and money, yet people set a higher value on the latter.[8] They knew fully well that value is not intrinsic to the object in the sense

[7] An Essay on Western Civilization, by W. Cunningham, D.D., p. 78.

[8] *De civitate Dei*, XI., c. 14.

intended by Dr. Cunningham, but that it largely at least depends on the wants and desires of men, though, of course, there should be something in the object to rouse those desires and satisfy those wants.

Even Professor Ashley falls into the same mistake. "With us," he says, "value is something entirely subjective; it is what each individual cares to give for a thing. With Aquinas it was something objective; something outside the will of the individual purchaser or seller; something attached to the thing itself, existing whether he liked it or not, and that he ought to recognize." [9]

Professor Ashley's treatment of the doctrine of St. Thomas is sympathetic, but in his failure to grasp some of its essential features he shows how difficult it is without special training to understand scholastic theology. Still less can another assertion of these two scholars be admitted. In the last edition of his *Growth of English Industry and Commerce,* Dr. Cunningham has the following passage:—"The whole conception of a just price appears to be purely Christian; according to Professor Ashley, who has written an admirable exposition of the whole subject, it is unknown to the civil law, and had as little place in Jewish habits as it has in modern society; but it really underlies a great deal of commercial and gild regulation, and it is constantly implied in the early legislation on mercantile affairs." [10] Although in the text just quoted Dr. Cunningham asserts that the

[9] *Introduction to English Economic History and Theory,* I., p. 140.

[10] *Loc. cit.,* I., p. 252.

whole conception of a just price appears to be purely Christian, yet in a note to the passage he admits that it is partly based on Aristotle. As a matter of fact it was altogether based on Aristotle. It is an axiom with the scholastics that Christianity contains no directly moral precepts which do not belong to natural law except those which relate to Faith and the Sacraments. They certainly regarded the doctrine of the just price as part of the doctrine on Justice, and Justice is certainly a virtue of the natural law. If St. Thomas quotes the words of Our Lord — *Whatsoever you would that men should do to you, do you also to them* — he merely makes use of these words to enunciate the first great principle of the law of nature, a principle known to Moses as it was to Confucius, the fundamental axiom of all sound ethics. Professor Ashley did, indeed, at one time think that the phrase — *justum pretium* — first occurred in St. Augustine, but in a note at the end of the volume he shows that he had detected his mistake before his book was published. The phrase occurs twice in the laws of Diocletian and Maximian, which were inserted in the Code,[11] and the idea as distinct from the exact phrase is one which belongs to justice and human reason, as Aristotle and Cicero show.

Within the last few years many signs have appeared of what is really a return, I will not say, to the scholastic, but to the true doctrine of value and price. Dr. Cunningham himself gives evidence of this. In his Essay from which we quoted above he admits that "modern moral feeling does not sensibly differ from

[11] *Codex*, IV., 44, 2 and 8.

that of medieval times in the desire, if it were possible, to interfere with the action of any dealers who are able to enrich themselves through the necessities or the ignorance of others, and to gain at their expense." [12] Still more satisfactory is what he has in the last edition of the *Growth of English Industry:* "Common estimation is thus the exponent of the natural or normal or just price according to either the medieval or the modern view; but whereas we rely on the higgling of the market as the means of bringing out what is the common estimate of any object, medieval economists believed that it was possible to bring common estimation into operation beforehand, and by the consultation of experts to calculate out what was the right price." [13] A belief, it may be added, which is shared by the framers of English law, as we have seen, and by business men to this day.

Henry Sidgwick, in an article contributed by him to Sir R. H. Inglis Palgrave's *Dictionary of Political Economy,* writes: —"So far as it has attempted to supply this need, the teaching of political economists has generally pointed to the conclusion that a free exchange without fraud or coercion is also a 'fair' exchange. It is, however, doubtful how far this interpretation has ever satisfied the common moral consciousness, when cases are considered in which one party to the exchange is found profiting by the ignorance or distress of the other. At any rate it has been widely maintained that a strictly competitive exchange does not tend to be really 'fair'— some say cannot be really 'free'— when one of the parties is

[12] Page 80. [13] Page 253.

under pressure of urgent need. . . . Many who are not socialists, nor ignorant of economic science, have been led to give some welcome to the notion that the ideally 'fair' price of a productive service is a price at least rendering possible the maintenance of the producers and their families in a condition of health and industrial efficiency." [14]

The doctrines of the liberal school of English political economy were never so widely accepted on the Continent as they have been in England, and it is on the Continent that their narrow doctrine about price has been most vigorously and successfully assailed. M. A. de Tarde, an advocate of the Court of Appeal at Paris, published his interesting Work *L'Idée du Juste Prix* in 1907. It is a history and criticism of opinions not from the theological but from the economic point of view, and perhaps, the more valuable to us on that account. Price, of course, is merely the measure in money of the value of a commodity, and M. de Tarde shows that the various theories of value, sometimes even in spite of the protestations of their exponents that ethics had no place in such questions, involved also an idea of justice. With the liberal school competition was supposed to settle what a fair equivalent for any commodity was in the circumstances, while Marx and the socialists maintained that the laborer has a right in justice to all the wealth that is produced, for all wealth is the produce of labor. Recent economic theory is adverse to both views, and shows a marked

[14] S. v., *Political Economy and Ethics.*

tendency to return to earlier theories. As M. de Tarde says:

"Mais, si le XIX^e Siècle paraît s'être inspiré, pendant longtemps, de ce libéralisme, et s'être abstenu de faire triompher dans la réalité un ideal défini de justice, cependant, l'état présent des doctrines et des moeurs semble faire retour à des conceptions plus proches, par certains côtés, de celles qui avaient cours à l'époque médiévale. Les dangers que la liberté de l'usure a causés dans l'Europe centrale et orientale, ont été assez grands pour induire la législation allemande et autrichienne à revenir en arrière et à faire renaître le délit d'usure. La législation anglaise les a suivies ces temps derniers. Les autres nations conservent précieusement leur limitation légale du taux de l'interêt. Enfin, le récent code allemand de 1900 crée de toutes pièces une théorie générale sur la lésion par inequivalence dans les contrats, qui consacre le fondement de l'idée d'un juste prix. Ces faits sont significatifs. La croyance que le prix le meilleur est le prix de concurrence, paraît fortement ébranlée. Tout le mouvement si puissant des conditions industrielles, tant ouvrières que patronales (*trusts*), proteste contre elle. Or, le régulateur de la concurrence supprimé, il faut faire appel à de nouveaux principes, et, dans ce désarroi, les doctrines idéales de justice paraissent devoir prendre une nouvelle force" (p. 66).

We quoted H. Sidgwick above as testifying to a common conviction that the workman has a right to a living wage which will keep him in decent comfort.

This, too, is a return to Catholic principles so beautifully set forth by Leo XIII in his encyclical on the condition of labor. On this point M. de Tarde says: "A l'opposée de la conception des économists, celles de saint Thomas et celle des trade-unionistes anglais demandent le *fair wage,* le *living wage.* C'est de ce côté là que penche la conscience moderne" (p. 256).

Perhaps the most interesting portion of his book is where M. de Tarde outlines the theory of price which is coming into vogue. According to this theory, value is not something which is inherent in an object, it is not crystallized labor, as Marx and his followers asserted. Neither is it, ordinarily at least, the result of agreement arrived at through the competition of buyer and seller. Values and prices are not settled by individuals, still less are they a compromise brought about by competition between the different values in use of buyer and seller. Exchange values are settled in society and by society; they express the social judgment as to the equivalence in social value between a commodity and its price. "Au contraire les jugements de valeur, qui influeront sur l'échange, seront plus habituellement d'une part, celui que l'acheteur *suppose chez son vendeur;* d'autre part, celui que son vendeur *suppose chez son acheteur.* Ce sont des jugements moyens de vendeurs et d'acheteurs qui sont pris en considération, c'est-à-dire des jugements basés sur des désirs moyens et des croyances moyennes. Ainsi, la valeur qui sert de fondement le plus souvent à la prétention de chaque échangiste, c'est la valeur *collective,* celle qui est commune à toute un groupe. C'est celle-là, notamment, que le

vendeur prévoit et calcule avant de fixer son prix de vente, et, s'il a intérêt maintes fois à faire descendre ce prix jusq'au minimum du coût, c'est qu'ainsi, en abaissant le jugement de valeur moyen sur lequel il table, il s'adresse à un plus grand nombre de désirs, il étend sa clientèle." [15]

If we enquire how the collective judgment concerning the value of a commodity is formed, we are entering on a question of social psychology. Groups and societies of men have their special desires, prejudices, opinions, like individuals. They express their opinion in a variety of ways as to the value of a commodity, as to the price of a horse, for example. That collective judgment gives exchange value to commodities, and it is its measure.

The same view has recently been defended in Germany in a pamphlet published last year by Dr. Lifschitz. It is, of course, the doctrine of the common estimation, the cause and measure of value according to the scholastics. But it is noteworthy that it is not, as Dr. Cunningham said in the passage quoted above, the result of the higgling of the market; it exists already and is presupposed while the higgling takes place; it guides and directs it, as M. de Tarde, resting on experience and observation, explains. There is reason to rejoice at the return of sounder views which we have tried to show and illustrate, not simply because these views are those of the scholastic theologians, but because they are truer and more wholesome than those which they tend to supplant. One theory favored usury, sweating, commercial dis-

[15] A. de Tarde, p. 247.

honesty, and oppression of the poor; while another formed the central doctrine of modern socialism. The true doctrine of value and price rests on justice, the only firm foundation of States.

II

VALUE IN MORAL THEOLOGY AND POLITICAL ECONOMY

THE price of a thing is the expression in money of its value. But what is value? What is it that makes a pair of boots sell for sixteen shillings in a certain place on a fixed day? The question is one of primary importance in the science of Political Economy. Jevons [1] quotes with approval the following words of Mill: —

> Almost every speculation respecting the economical interests of a society thus constituted, implies some theory of value; the smallest error on that subject infects with corresponding error all our other conclusions; and anything vague or misty in our conception of it, creates confusion and uncertainty in everything else.

The theory of value is picturesquely said by a foreign writer to be the dragon which guards the entrance to economic science; while another declares that he who understands value, understands half of the difficulties of the science of Economics.[2] If the notion of value is fundamental in Economics, it is of great importance, to say the least, in Moral Theology, and particularly in questions concerning justice and

1 *Theory of Political Economy*, p. 80.

2 C. Antoine, S.J., *Economie Sociale*, p. 253.

contracts. It may be of interest to inquire what economists have to say on a subject which specially belongs to their province, and to compare it with the received doctrines of Moral Theology. According to a recent writer, economists have shown the teaching of theologians on the point to be chimerical and absurd: and as I propose to make the words of this writer the basis of my remarks, I will quote him at length: —

In modern times the form of economic doctrine has been affected by the fact that it has been so much discussed by men who were accustomed to deal with physical and mathematical problems, and who brought their habitual methods of reasoning to bear on the phenomena of supply and demand. In a similar fashion the economic doctrine of the thirteenth century in Christendom was affected, as far as its form was concerned, by the engrossing studies of the time; economic problems were discussed by men who were habituated to the methods of metaphysics. In accordance with current modes of thought, they tried to determine an ideal standard which should be realized in particular transactions, and sought for a definite conception of a "just price"; the practical inquiries then resolved themselves into means for discovering the just price of each particular thing. From the modern point of view this whole quest was chimerical: prices are always fluctuating, and must, from their very nature, fluctuate. According to the "plenty or scarcity of the time" there will be great differences in the quantities available, and, therefore, in the relative values of wheat, cloth, coal, and commodities of every sort. We know, too, that the commodity used for money must vary in value from time to time, and that, therefore, there must be continual fluctuations not only in values but in prices as well. The attempt to determine an ideal price implies that there can and ought

to be stability in relative values, and stability in the measure of values, which is absurd.

The medieval doctrine and its application rested upon another assumption, which we have outlined. Value is not a quality which inheres in an object, so that it shall have the same worth for everybody; it arises from the personal preferences and needs of different people, some of whom desire a given thing more and some less, some of whom want to use it in one way and some in another. Value is not objective—intrinsic in the object—but subjective, varying, with the desires and intentions of the possessors or would-be possessors; and because it is thus subjective, there cannot be a definite ideal value, which every article ought to possess, and still less a just price as the measure of that ideal value.[3]

According to Dr. Cunningham, therefore, the medieval theory of a just price for everything, and the medieval concept of value have been shown to be absurd and untenable by modern economic science. The schoolmen of the Middle Ages, habituated to the study of metaphysics, looked upon value as a quality intrinsic to the thing itself. To them it was something objective, definite, stable, and fixed; and so the measure of value, or price, was something stable and fixed also.

On the contrary, the doctrines of modern economic science have been formulated by men accustomed to deal with the physical and mathematical sciences. These men have brought their strictly scientific methods to bear on the economic problems of supply and demand. They have taught us that the medieval

[3] Dr. Cunningham, *Western Civilization in its Economic Aspects*, 1900, p. 78.

quest after a just price for commodities was as chimerical as the quest after the San Grail. Taught by them we now know that prices are not stable and fixed, but are always fluctuating, and must of their very nature fluctuate. The plenty or scarcity of the time will affect the quantities of the available commodities, and so will affect the relative values. We now know that money itself, the measure of value, is subject to the same economic laws as other commodities, and that it fluctuates in value as they do. So that the attempt of the schoolmen to arrive at a just price for each particular thing involved the two absurdities of supposing that there can be stability in relative values, and stability in the value of money.

Let us see what the schoolmen really did teach about the just price of commodities. It is easy to state some absurd theory, ascribe it to the metaphysical scholastics of the Middle Ages, and then proceed to demonstrate its absurdity. It is a more scientific method of procedure first, as the scholastics were fond of doing, to make sure of the fact — *Primo, quæritur utrum sit.*

Molina, one of the great doctors on justice, will tell us what the common teaching of the schoolmen concerning the just price of commodities really was. Almost any other of a score of scholastic theologians would serve our purpose equally well, and I shall refer to one or two others in the course of my remarks, but in the main I propose to follow Molina. The difference between the date at which he lived and the thirteenth century, which Dr. Cunningham has specially in view, need not trouble us, for there was no

change of doctrine in the meantime; Molina's teaching is merely that of St. Thomas somewhat amplified.

This scholastic doctor then is careful in the first place to say what the just price is not derived from. It is not, he says, to be measured by the excellence of things according to their own nature and intrinsic qualities, but according as they serve man's use and benefit. A mouse considered in its own nature is a more excellent thing than corn, but mice are worthless, while corn, which serves man's necessities, has its price.

However, he proceeds, the price of a thing does not depend merely upon its usefulness for supplying man's necessities, but it depends a very great deal upon the estimation which men commonly choose to have of it with reference to its use. Thus the just price of a gem, which is for ornament only, is greater than that of a large quantity of corn, wine, meat, cloth, and horses. And among the Japanese a piece of rusty iron or cracked pottery is of immense value on account of its antiquity; while among us it is worth nothing at all. And mere ornaments of colored glass have a far higher price among the Ethiopians than gold, which they exchange for them. Now all this is brought about solely by the common estimation in which things are held in the place where they are exchanged, so that such trafficking is not to be condemned, though the want of culture and the manners of such peoples are sometimes laughable.

So that the just price of a thing depends a great deal upon the common estimation of men in any

place; and when without fraud or any unfair dealing, a commodity is commonly sold at a certain price in any place, that may be considered the just price, as long as the circumstances which cause prices to vary remain unchanged. The Roman Civil Law[4] and the common opinion of doctors agree on this point.

But it must be observed, adds Molina, that a great many circumstances alter the prices of commodities. Thus scarcity makes the just price rise, while plenty makes it fall; the greater number of competing buyers at one time than at another, or their eagerness to buy, makes prices rise, on the other hand the fewness of buyers makes them fall; the greater demand at one time than at another, while the supply remains constant, as of horses in time of war, makes prices rise. The scarcity of money in any place makes the price of other things fall, while abundance of money makes the price of other commodities rise. For the less the supply of money in any place the greater its value, and thus many more other goods are bought with the same sum. The manner of sale, too, alters the price, as we see in sale by auction, or when a man is anxious to find buyers and seeks them, or in sale by retail.[5]

The just price which we have been considering was called by some theologians, following Aristotle, the *natural* price; not, as Molina is careful to explain, because it did not depend largely on men's estimation, nor because it was not very inconstant and changeable, but to distinguish it from the *legal* price,

[4] L. *Pretia rerum*, Dig. ad legem Falcidiam.
[5] Molina, *De Justitia*, tract ii., disp. 348.

which was settled for some commodities by law. Inasmuch as the natural, or *vulgar* price as it was also called, depended upon men's estimation, wants, and desires, which are very various, it could not be a quantity exactly determinate and precisely defined, it necessarily admitted of a certain latitude; and so theologians distinguished the highest, the lowest, and the middle price, and taught that justice would be done if the seller kept within those limits.[6]

All this, even in the light of modern economic doctrines, seems eminently practical and thoroughly in keeping with common sense; I fail to detect in it anything that savors of the "metaphysical," if that term is intended by Dr. Cunningham to mean unreal and unpractical. The whole point of the teaching of the theologians lies in this, that there is such a thing as a fair and reasonable price for commodities, in which English law and English juries agree with them, and that it is matter of justice to keep to it in contracts. The scholastics certainly knew as well as the modern economist that prices are always fluctuating; they knew that the plenty or scarcity of the time has great influence on the relative values of commodities of every kind; they knew of what is now called the law of supply and demand; they even knew that money is exposed to constant variations in value, and that it would be absurd to look for stability either in relative values, or in the measure of values. In fact they knew all that Dr. Cunningham has taken for granted that they did not know.

From what has already been said, it is quite clear

[6] *Ibid.* disp. 347.

also, in spite of what Dr. Cunningham seems to imply, that the scholastics knew that "value is not a quality which inheres in an object, so that it shall have the same worth for everybody." Molina expressly states that it arises from the preferences and needs of different people, with their different desires and wants. As we shall presently see they unanimously denied that the seller can charge for any special individual advantage which may accrue to the buyer from the bargain; thus clearly supposing that social and individual value were two very different things. However, a difference between the scholastic doctrine on value and modern theories is touched upon, when Dr. Cunningham proceeds to say: —

> Value is not objective—intrinsic in the object—but subjective, varying with the desires and intentions of the possessors or would-be possessors; and because it is thus subjective, there cannot be a definite ideal value, which every article ought to possess, and still less a just price as the measure of that ideal value.

According to modern theories then, value — exchange value is meant — is merely subjective, varying with the desires and intentions of the possessors or would-be possessors of a commodity; and so there is no definite value which a thing possesses, and no just price, for a just price is merely the just measure, the proper equivalent of value. A man may sell a horse for what he can get, he may exact whatever interest the borrower will give him for a loan, he may pay his workmen as little as necessity forces them to take for a day's wage. There is no just price for commodities, justice is not violated by however un-

conscionable a bargain. Certainly these are conclusions of great importance, and if they had been proved to be true, we should have to modify some of the rules of Moral Theology. Catholic theologians of the Middle Ages, as well as their successors of to-day, are unanimous in teaching that there is such a thing as a just price for commodities, that justice can be violated by charging too much for what is sold, and that individual wants and tastes do not finally settle the just price. "The estimation of one or two," says Lugo,[7] "does not suffice to raise the price, but the common estimation is required." This doctrine is common to all theologians, and most are content to quote in proof of it the Roman Civil Law: "The prices of things are not settled by the tastes or utility of individuals, but by those of the generality of people."[8] The great authority of the Roman Law, that ever-living monument of written reason, was of itself considered sufficient to settle the question; but some went further in their inquiries as to the method of arriving at the just price. Scotus taught that to estimate the just price of his merchandise the merchant should reckon up all the expenses which he has incurred in buying, transporting, housing his goods, then add to them something for his labor and trouble, and something else to compensate for the risks he has run: what corresponds more or less to all these items, will be the just price, he says.[9]

In modern phrase the costs of production were the

[7] *De Justitia*, xxvi., n. 42.
[8] L. *Pretia rerum*, 63 Dig. ad legem Falcidiam.
[9] Molina, disp. 348.

measure of value, according to Scotus. This opinion was commonly rejected by other theologians, who pointed out that if this were so, the merchant who had lost a portion of his goods might raise the price of the rest to compensate himself; which could not be admitted, for the price of goods is not measured by the profit or loss of the seller, but by the common estimation concerning their value in the place where they are sold, consideration being given to all the circumstances; besides *Res perit domino*, and it was not fair that the public should bear the private losses of the merchant.

The common estimation then is the cause of value and the measure of value, according to the scholastics; and if the formula be understood as they understood it, there seems no objection why "the common estimation" should not still be used as a correct term for the cause and the measure of what economists call market prices. For certainly the market price of an article, whatever it may ultimately depend upon, is settled proximately by the common estimation of the value of the article in the particular market, at the time in question. Some of the most recent writers on Economics state this doctrine in terms as precise as those used by the scholastics. Thus Mr. J. A. Hobson [10] says: —

> Now, just in proportion as exchange or market-value enters and displaces use-value, so does social determination of value displace individual determination. While value in use is strictly personal, value in exchange is distinctively social. A market, however crudely formed, is a so-

[10] *The Social Problem*, 1901, p. 144.

cial institution; the value of our farmer's produce is partly determined by the personal labor he has put into them, but partly by the needs and capacities of others, and not even by the needs and capacities of any definite individual, but by a great variety of needs and capacities expressed socially through the instrument of a market price, which is a highly elaborate result of bargaining, and does not represent the needs or the capacity of any single purchaser.

It would seem, then, that the difference of view between theologians and economists appears prominently and practically only with regard to non-market prices. The theologian teaches that justice requires that there should be an equivalence of social value between the price and the thing bought; (I say "social value," because, of course, each party to a contract hopes to gain in individual value in use, otherwise there would be no exchange;) that the just price is settled by the common estimation of the value of an article; that value is partly objective, inasmuch as it supposes usefulness, capacity to be esteemed and desired, in the object, partly subjective, not, indeed, with reference merely to the wants and desires of the buyer and seller, but with reference to the common estimate of people at the particular time and place. However, theologians commonly allow the seller to charge for any special private loss of any sort which he may suffer from parting with his property, the *pretium affectionis* as it is called; and so to this extent they concede that subjective and private wants and desires may be allowed to influence the terms of the contract. What they agree in rejecting is the view that the seller may exact a higher price on ac-

count of some private necessity of the buyer, for then he might sell dearer to the poor than to the rich, or on account of some special advantage accruing to the buyer from his purchase, for then he would sell what did not belong to him, and sin against justice.[11]

On the other hand the economist considers that the value of an article and its price are settled by the consent of the parties to a bargain; no man would give 100 per cent. interest for money unless it were worth his while; the loan, therefore, is worth that price to him, and the lender does him no injustice in taking it.

This, of course, would be true if both parties to the contract were equally intelligent, free, and independent; a man, if he chooses, may give what he likes of his own for any commodity; if he gives a sovereign for a cup of tea at a bazaar, held for a charitable purpose, nobody will have anything but praise for his generosity. But usually when an unconscionable bargain is struck the parties are not on equal terms.

If a man promises 100 per cent. for a loan, when the current rate of interest on money is 3 per cent., or if a laborer undertakes to work for sixpence a day, when the common rate of wages is sixpence an hour, hard necessity alone, or perhaps ignorance, will have been the cause of his consent to such unfair terms. In such cases theology teaches that he who exacts such hard terms commits a sin against justice, and is bound to restitution; but the theory of value, on which this theological doctrine rests, is, according

[11] St. Thomas II. ii. q. 77, a. 1.

to Dr. Cunningham, an "assumption which we have outlived."

The difference between theological and economic doctrines on this point may partially perhaps be explained by the difference of standpoint assumed by theologians and economists respectively. Theologians consider the question from an ethical point of view, they condemn whatever the Christian code of morals condemns; on the other hand many economists at least treat the phenomena of political economy as they treat the phenomena of the physical sciences. The law of supply and demand is, for the purposes of the science, studied and reasoned upon with the help of mathematics as if it were as necessary and determinate as a law of astronomy; most economists abstract from questions of morality. Thus Jevons wrote: —

> I conceive that such a transaction must be settled upon other than economical grounds. The disposition and force of character of the parties, their comparative persistency, their adroitness and experience in business, or it may be a feeling of justice or of kindliness really influences the decision. These are motives altogether extraneous to a theory of economy.[12]

Perhaps Dr. Cunningham belongs to this class of economists, and perhaps he would not disagree with the theologians if he treated the matter from their point of view, for he writes: —

> We feel that it is unfair for the economically strong to wring all he can out of the economically weak, or to trade on terms in which "common estimation" is notoriously set

[12] *The Theory of Political Economy*, p. 124.

aside. We have given up as impracticable many of the old attempts to put down hard bargains with a high hand: but modern moral feeling does not sensibly differ from that of medieval times in the desire, if it were possible, to interfere with the action of any dealers who are able to enrich themselves through the necessities or the ignorance of others, and to gain at their expense. If we tried to find a test by which to discriminate hard bargains we could scarcely do better than adopt the medieval phrase and say that hardship arises when a bargain is made without reference to "common estimation." [13]

This is admirable, but we hardly see how it can be reconciled with other passages of the same author. In other passages he seems to condemn the theological doctrine not only as out of place in economics, but as false in itself. He thus seems to agree with many other writers, the earliest of whom is said to be Hobbes, who rejected the hitherto received doctrine on commutative justice, and substituted an invention of his own. "The value of all things contracted for," he says, "is measured by the appetite of the contractors: and therefore the just value is that which they be contented to give." [14]

This assertion Hobbes did not attempt to prove, nor has it been proved by any of his followers. The argument drawn from marginal values is no proof that the subjective and individual theory of value is in accordance with truth and justice; it merely formulates the fact that as a rule people will exchange commodities as long as it is worth their while to do so.

[13] *Western Civilization*, p. 80.
[14] Hobbes, *Of Man*, p. 137.

Economists are by no means agreed as to the nature of value, although all confess that it is a question of the greatest difficulty; some hold that it is purely subjective, depending upon the desires of each individual; others, that it is the same thing as private utility; others, that it is social utility; others, that it is the relation between two services exchanged; others, that the value of a commodity is the labor bestowed on it, and so forth. None of these theories is commonly accepted, and none of them is an improvement on the old doctrine that common estimation is the cause and measure of value.[15] The merely subjective theory, which seems to be most in vogue, fails to furnish any reasonable ground for condemning transactions which all, economists included, admit to be wrong. It even furnishes some sort of justification for the iniquities of the swindler, the usurer, and the sweater. I cannot do better than conclude this article with the concise argument by which, in his Encyclical on the Condition of Labor, Leo XIII proves its falseness as applied to the price of labor.

We now approach a subject [says the Holy Father] of very great importance, and one on which, if extremes are to be avoided, right ideas are absolutely necessary. Wages, we are told, are fixed by free consent, and, therefore, the employer, when he pays what was agreed upon, has done his part, and is not called upon for anything further. The only way, it is said, in which injustice could happen would be if the master refused to pay the whole of the

[15] Professor Smart in his little book on *The Theory of Value* (1914) says: "The history of economic science is strewn with the wrecks of theories of value," p. 1.

wages, or the workman would not complete the work undertaken. . . .

This mode of reasoning is by no means convincing to a fair-minded man, for there are important considerations which it leaves out of view altogether. To labor is to exert oneself for the sake of procuring what is necessary for the purposes of life, and most of all for self-preservation. *In the sweat of thy brow thou shalt eat bread.* Therefore a man's labor has two notes or characters. First of all, it is *personal;* for the exertion of individual power belongs to the individual who puts it forth, employing this power for that personal profit for which it was given. Secondly, man's labor is *necessary:* for without the results of labor a man cannot live, and self-conservation is a law of Nature which it is wrong to disobey. Now, if we were to consider labor merely so far as it is *personal*, doubtless it would be within the workman's right to accept any rate of wages whatever; for in the same way as he is free to work or not, so he is free to accept a small remuneration or even none at all. But this is a mere abstract supposition; the labor of the working man is not only his personal attribute, but it is *necessary*, and this makes all the difference. The preservation of life is the bounden duty of each and all, and to fail therein is a crime. It follows that each one has the right to procure what is required in order to live, and the poor can procure it in no other way than by work and wages.

Let it be granted, then, that, as a rule, workman and employer should make free agreements, and in particular should freely agree as to wages, nevertheless there is a dictate of Nature more imperious and more ancient than any bargain between man and man, that the remuneration must be enough to support the wage-earner in reasonable and frugal comfort. If through necessity, or fear of a worse evil, the workman accepts harder conditions because an employer or a contractor will give him no better, he is the victim of force and injustice.

In the *Irish Theological Quarterly* for October, 1914, Fr. Kelleher subjected the doctrine of the just price which I have been defending, to some adverse criticism. He writes:

> The difficulty against this, which we may call the general desirability, convenience, or utility theory, is that it is only a variety of the fascinating game of sending the fool farther. In substance it means that we can get over the objection against a subjective, individualistic standard by applying it to 100 or 1000 cases instead of to one.

Surely there is some confusion here. A standard which applies to 100 or 1000 cases is not a purely subjective and individualistic standard. To show that just prices are settled by the common estimation is not an attempt to get over the objection against a subjective, individualistic standard by the fascinating game of sending the fool farther. This is a matter of importance and touches the very foundation of the commonly received theological doctrine on the point at issue. Let us see if we can clear it up.

A society of men is not a mere collection of individuals. There is the same difference between a society and the individuals who compose it as there is between a cathedral and a heap of stones which go to the building of it. Society is an organism, as the sociologists say. However small or however large a society may be, it is an organized, human entity. The family, the town, the province, and the nation, are so many human entities, with rights, obligations, and a spirit of their own, quite distinct from the rights, obligations, and spirit of the individual members who compose those different societies. It is a fact, well

known and admitted on all hands, that the spirit of a school lives and succeeds in giving a peculiar impress on the successive generations of boys who pass through it. We need not here describe the organism of society on its physical side. It has an intellectual and an ethical side which specially interest us at present. Society seems to know where its interests lie by instinct. It is very quick to see when they are threatened and how they may be furthered. Liverpool, for example, shows its good sense by making its tramway system converge on the landing stage. From North, East, and South, the tram lines show on what the prosperity and very existence of Liverpool depend. It is essentially a seaport town, and depends for its prosperity on its sea borne commerce from the West. At the outbreak of the German War, she at once began to take means to protect her approaches by sea. She is interested in religion and architecture, witness her new cathedral; her art gallery and libraries show that she is interested in art and literature; she has attempted the solution of many social problems; she has a young and ambitious university, but she is most interested in her docks. Anything that threatens them, whether a strike, or the danger of a bombardment, or a fire, or a new dock, awakens her keenest interest. Long study and experience have taught her how best to defend and to further her interests as a great seaport town. She does not waste money by cutting useless channels to the sea, like some of her neighbors. But she has an efficient fleet of dredgers which keep the river channel open for the largest liners that cross the Atlantic.

She has a mind and a will of her own. Her mind and her will are quite different from the mind and the will of Manchester or of Preston, though all three towns are in the same English county. A new oratorio might draw a good audience at Manchester, a lecture on new openings for cotton goods might awake interest in Preston, I doubt if Liverpool would listen to either. She does not despise liberal culture, but she is mainly devoted to the practical application of science and her school of medicine has distinguished itself in work on tropical diseases. She has a tender heart and has welcomed hundreds of Belgian refugees and subscribed large sums for their maintenance. To come closer to our subject. Liverpool, as becomes a great center of commerce, has a very good idea of what all things in heaven and earth will exchange for. She knows the commercial value of things. This estimate does not depend on the individual preferences and tastes of her citizens. It does not depend even on her corporate tastes and characteristics. She knows well that many things which have an exchange value come into her docks, but which she herself has no use for either socially or individually. She values them only because they will sell. Her merchants know quite well what they can get for them. There is a common estimate of what all sorts of merchandise will fetch if it is exposed for sale. That estimate is constantly changing because it depends on a great variety of ever changing circumstances, and it is expressed by the prices which rule on the exchanges and markets of the city. If a Manchester spinner asks for a supply of raw

cotton, the Liverpool broker can tell him at what price he can have it. The broker knows whether this year's crop is good, bad, or average. He knows whether it has cost more or less than usual to harvest and bring to market. He knows the costs of production. He knows the price at which cotton is sold in New York. He knows the cost of freightage, how much it is increased by war and other risks. He can form a shrewd judgment as to whether the price is likely to rise or fall within the next month or two, and so he sends his quotation to the Manchester merchant. The estimate which one Liverpool merchant forms is practically the same as that formed by another of equal competence. The price at which the bargain is struck is based on an estimate made by experts on what is the exchange value of cotton. It is based on a great multitude of external facts. It depends mainly on objective facts, not on subjective opinions or fancies. In no sense does it depend on the subjective and individualistic views and wants of the buyer or seller. It is a common estimate of the leading members of the exchange. It is a fair and reasonable estimate because it rests on facts. The price, then, at which the Liverpool broker supplies the Manchester spinner with raw cotton is a fair and reasonable price, it is a just price.

The expert community of Liverpool, whose ideas and judgments are not those of the individuals who compose it, nor a common denominator of them, but those of a distinct, intelligent, and moral entity, estimates that in certain circumstances, at a certain time, raw cotton should exchange at the rate of six pence

per pound. There is an equivalence of social value between a pound of raw cotton and six pence. In exchanges the virtue of justice requires that equality of value be given and received. That, then, is the just standard of price which must be observed by buyer and seller alike. It is a standard which is objective and social, not subjective and individualistic, nor is it a variety of the fascinating game of sending the fool farther.

III

UNEARNED INCREMENT AND TITLE BY ACCESSION

Soft Socialism, as the species has been nicknamed, sums up its policy in the formula: "From each according to his ability, to each according to his want." The sentiment as expressing the ideal to which we may all aspire, and toward whose realization we may all work by the lawful means at our disposal, is quite admirable, and leaves nothing to be desired. There are, however, many obstacles to its realization in this workaday and selfish world, and prominent among them is the actual organization of social life. The militant school of socialism therefore acknowledges that much pulling down and other rough work must be done before we can hope to establish the socialist paradise on earth. These militant socialists also have their formulæ, and at the root of them all is the claim of the laborer to the whole product of labor. H. S. Foxwell, Professor of Economics at the University of London, in his interesting introduction to Dr. Anton Menger's book on the right to the whole produce of labor, does not hesitate to make this assertion: "Dr. Menger does not exaggerate when he says of this principle that it is the fundamental revolutionary conception of our time, playing the same

part as the idea of political equality in the French Revolution and its offshoots" (page 6). Dr. Menger discovers scattered suggestions of the doctrine in Locke's *Two Treatises of Government,* and it is laid down with sufficient clearness in Adam Smith's *Wealth of Nations.* "The produce of labor," says the father of modern political economy, "constitutes the natural recompense of wages of labor. In that original state of things which precedes both the appropriation of land and the accumulation of stock, the whole produce of labor belongs to the laborer. He has neither landlord nor master to share with him." The writers of the classical school of political economy accepted the doctrine and developed it. Ricardo, for example, quotes the following extract with approval from Adam Smith: —

> In that early and rude state of society which precedes both the accumulation of stock and the appropriation of land, the proportion between the quantities of labor necessary for acquiring different objects seems to be the only circumstance which can afford any rule for exchanging them for one another. If among a nation of hunters, for example, it usually costs twice the labor to kill a beaver which it does to kill a deer, one beaver should naturally exchange for, or be worth, two deer. It is natural that what is usually the produce of two days', or two hours' labor, should be worth double of what is usually the produce of one day's or one hour's labor.

Ricardo then adds: —

> That this is really the foundation of the exchangeable value of all things, excepting those which cannot be increased by human industry, is a doctrine of the utmost importance in political economy; for from no source do so

many errors and so much difference of opinion in that science proceed, as from the vague ideas which are attached to the word value. If the quantity of labor realized in commodities regulate their exchangeable value, every increase of the quantity of labor must augment the value of the commodity on which it is exercised, as every diminution must lower it. . . . If we look to a state of society in which greater improvements have been made, and in which arts and commerce flourish, we shall still find that commodities vary in value conformably with this principle: in estimating the exchangeable value of stockings, for example, we shall find that their value, comparatively with other things, depends on the total quantity of labor necessary to manufacture them, and bring them to market.

Classical political economy reached its highest point of development in the writings of John Stuart Mill. He acknowledged that the question of value is fundamental in political economy: —

> The smallest error on that subject [he said] infects with corresponding error all our other conclusions; and anything vague or misty in our conception of it, creates confusion and uncertainty in everything else. Happily [he adds] there is nothing in the laws of value which remains for the present or any future writer to clear up; the theory of the subject is complete.

He therefore accepted the teaching of Ricardo, but thought that besides the quantity of labor the wages also of labor must be taken into account. Seldom, perhaps, has such expression been given to smug contentment and satisfaction; seldom certainly has smug contentment and satisfaction met with so serious a reversal as has the classical theory of value. Certain English revolutionists and socialists who lived at the

end of the eighteenth and the beginning of the nineteenth century, were not slow to appropriate the doctrine of the classical economists and apply it to their own purposes. They began to point out that if the value of things was nothing but the quantity of labor put into them, and the laborer had a right to the fruit of his own labor, all the wealth of the country of right belonged to the workers, who by their labor produced it. Dr. Menger traces this doctrine and its application to anarchism and socialism through a succession of English writers, of whom the chief are William Godwin, Charles Hall, and William Thompson. In a very interesting passage, Professor Foxwell regards modern socialism as a protest against the exaggerated individualism introduced into European society at the Renaissance, and especially by the Protestant Reformation. Nowhere at the opening of the nineteenth century was that individualism more pronounced and the consequent sufferings of the masses of the people more severe than in England. It was natural, then, that the swing of the pendulum to the opposite extreme should first be observed in England, the home of *laissez faire,* and of the bourgeois political economy, as Marx called it. From English socialists the doctrine of the right of the worker to the whole produce of labor was taken over by Marx and Rodbertus, and it thus became the fundamental doctrine of modern scientific socialism. The importance attached to it in modern socialist literature, and the implications contained in it, cannot be better appreciated than in the trenchant language of Mr. Robert Blatchford: —

There are but a few landlords [he says, in *Britain for the British*] but they take a large share of the wealth. There are but a few capitalists, but *they* take a large share of the wealth. There are very many workers, but they do not get much more than a third share of the wealth they produce. The landlord produces *nothing*. He takes part of the wealth for allowing the workers to use the land. The capitalist produces *nothing*. He takes part of the wealth for allowing the workers to use the capital. The workers produce all the wealth, and are obliged to give a great deal of it to the landlords and capitalists who produce nothing. Socialists claim that the landlord is useless under any form of society, that the capitalist is not needed in a properly ordered society, and that the people should become their own landlords and their own capitalists. If the people were their own landlords and capitalists, all the wealth would belong to the workers by whom it is all produced.

As labor, then, produces all the wealth of the country, all the wealth of the country belongs of right to the laborer. Rent and interest on capital is unearned increment, surplus value, produced by the worker, but which is filched away from its rightful owner by the landlord and the capitalist. To quote Mr. Blatchford again:—

We all know how the landlord takes a part of the wealth produced by labor and calls it "rent." But that is only simple rent. There is a worse kind of rent which I will call "compound rent." It is known to economists as "unearned increment." I need hardly remind you that rents are higher in large towns than in small villages. Why? Because land is more "valuable." Why is it more valuable? Because there is more trade done. Thus a plot of land in the city of London will bring in a hundredfold more rent than a plot of the same size in a Scottish valley.

For people must have lodgings, and shops, and offices, and works in the places where their business lies. Cases have been known in which land bought for a few shillings an acre has increased within a man's lifetime to a value of many guineas a yard. This increase in value is not due to any exertion, genius, or enterprise on the part of the landowner. It is entirely due to the energy and intelligence of those who made the trade and industry of the town. The landowner sits idle while the Edisons, the Stephensons, the Jacquards, Mawdsleys, Bessemers, and the thousands of skilled workers expand a sleepy village into a thriving town; but when the town is built and the trade is flourishing, he steps in to reap the harvest. He raises the rent. He raises the rent, and evermore raises the rent, so that the harder the townsfolk work and the more the town prospers, the greater is the price he charges for the use of his land. This extortionate rent is really a fine inflicted by idleness on industry. It is simple *plunder* and is known by the technical name of unearned increment. It is unearned increment which condemns so many of the workers in our British towns to live in narrow streets, in back-to-back cottages, in hideous tenements. It is unearned increment which forces up the death-rate and fosters all manner of disease and vice. It is unearned increment which keeps vast areas of London, Glasgow, Liverpool, Manchester, and all our large towns, ugly, squalid, unhealthy, and vile. And unearned increment is an inevitable outcome and an invariable characteristic of the private ownership of land.

There, then, we have a gospel of anarchy and revolution fully developed. It is short, and easily understood by the meanest intellect; it flatters the most powerful of all human passions, pride and cupidity. The worker produces by his labor all the wealth of the world; to the worker, then, all the wealth of the

world belongs. What have we to say to this proposition?

In the first place it is a very defective analysis which traces such great and widely spread evils to so simple a cause. The abuses of private ownership are doubtless great, and nobody deplores them more than we do. But the evils arising from the abuse of a system should not be attributed to the system itself.

Then, we willingly grant that labor and production is one of the titles to property. A man has a right to the fruits of his industry. We do not grant this grudgingly; on the contrary, as workers, we claim it for ourselves, as we willingly concede it to others. Work is a great blessing, a great safeguard which nobody should forego, and which for most people will ever be a necessity. *In the sweat of thy face shalt thou eat bread: If any man will not work neither let him eat.* We are the last people in the world to undervalue labor, and to deny it its just claims. The laborer, then, has a right to the fruits of his toil. If a man discovers land which belongs to nobody, and cuts timber there, out of which he constructs a cabin, the cabin is his property, as being the fruit of his labor and skill. He has a right to its exclusive use, no one else, against the reasonable wish of the owner, may make use of the convenience which it affords. The owner has a right to all the advantages which the cabin can afford. It shelters him from rain and cold, it protects him from the too warm rays of the midday sun, it is a defense against wild beasts and other enemies. Any use to which it can be put belongs to him and to him alone, exclusively, because

it is his property, the fruit of his labor. Because it is his property he may destroy it if he pleases, and use the material for firewood. He may give it or sell it to another. He may freely dispose of what is his own. To interfere with such a right would be to interfere with the rights of labor, for the products of labor belong to and are at the entire disposal of the laborer. If our laborer is another Crusoe on an island which belongs to nobody else, and he is lucky enough to find and capture a goat, the goat, too, becomes his property. He may kill and eat it if he likes, or he may keep it to furnish himself with milk. He may dispose of it as he likes, because it is his, and a man may do what he likes with his own. All the uses to which it can be put belong to him. If killed, its flesh and skin belong to him. If kept alive, all the uses to which it can be put are his for it is his property. If it happen to have young, the young belongs to the owner of the dam, for the dam, with all its activities, powers and capabilities, belongs to him who reduced it to subjection. If some one else comes to share our Crusoe's solitude, Crusoe may make him a present of some of his property, or he may barter it for something else of value. When the property by mutual consent is made over to another, it becomes his just as before it belonged to Crusoe. To deny this is to deny the sacred rights of property, it is to deny that a man may do what he likes with his own, it is to deny the liberty of contract, which it is so sovereignly necessary for the good of society to keep as far as possible unfettered.

All that has been said must be admitted by those

who maintain the right of labor to labor's produce. We have simply been developing what is implied by the right of property, and modern English socialists do not deny the right of private property; they loudly assert that the produce of labor is the private property of the laborer. But if what has been said cannot truthfully be denied, we begin to see the fallacy of the fundamental tenet of modern socialism. That fundamental tenet is that all wealth is the product of labor, and of right belongs to the laborer. Landlords and capitalists are thieves and robbers who not only may with justice be compelled to disgorge their ill-gotten wealth, but who in the interests of justice should be compelled to do so. But what if by free contract it has come into the possession of the present owners from those who had an undoubted right to transfer it? And this in many instances is undeniably the case. We must conclude that labor is undoubtedly one of the titles to property, but it is not the only one nor the chief one.

But, retorts the socialist, even if I admit this, it will not justify the extortionate rent which the landlord charges, nor the interest on barren capital. The unearned increment should be handed over to the community, to the people who make it.

To deny that the unearned increment of wealth belongs to the owner of that wealth is in reality to deny the rights of ownership as they have just been set forth. The owner of the field has a right to all the advantages which the field can afford. All its uses, all its activities and powers belong to him; it is precisely for those uses, activities, and powers that he

values it as his private property. The grass which it produces is his, whether he spent labor on it or not; labor is not the sole title to property. If the grass grew without labor it is unearned increment. Similarly, the young animals belong to the animals' owner, not by the title of labor but from the very nature of the right of property, by which all that the thing owned is, or is capable of becoming, belongs to the owner of it. If a great number of people come and settle round my field, my field rises in value, not because they or I have spent labor on it, but simply because now being more favorably situated with a view to the conveniences of life, it is more highly valued and is worth more than it was before. The enhanced value is unearned increment, but on that account it does not cease to belong to me.

Precisely in the same way the labor of the carpenter or bricklayer becomes more valuable in a thriving and rapidly increasing town. Whereas before he had to be satisfied with thirty shillings a week, he can now easily earn forty shillings. He works neither harder nor longer hours, but because of the increased demand, the value of his labor has increased. The enhanced value is unearned increment, but the carpenter would be very much astonished if he were told that it did not belong to him, but to the community who made it; that if he kept it he would be no better than a thief and a robber. All this is admirably summed up in the old maxim — *Res fructificat domino.* By the law of nature, by the very nature of the right of property, whatever a thing produces belongs to the rightful owner of that

thing. When the produce is due partly to the natural or artificial fertility of the property and partly to human labor, both the owner of the property and the laborer have rights in the produce. It is not possible to define exactly what proportion is due to the owner and what to the laborer. A laborer indeed whose whole working capacity was given to the work has a right to so much of the produce or its equivalent as will support him in decent comfort. The laborer has a duty and a right to live in a manner conformable to the dignity of human nature and his circumstances, and in the case supposed the only means he has to fulfil his duty and to exercise his right must be derived from the fruit of his toil. Beyond saying this no more precise rule for the division of the produce can be laid down, so there is room for amicable arrangement and contract.

As his labor belongs to the laborer there is nothing to prevent him from hiring it out to an employer at any reasonable rate. As money in our modern capitalistic society is a means of production, as it may readily be exchanged for land, machinery, and other means of production, money has in fact become virtually productive, and therefore the lender of money rightly charges interest for his loan; he shares in the produce of the money just as the landlord shares in the produce of his land.

Besides the natural increase of property due to natural fertility which we have hitherto been considering, property may increase by additions being made to it either by the agency of natural forces or by the will of man. The gradual additions made to

land by the action of a river or of the sea, called *alluvion* in English law, is an instance of an addition being made to property by natural forces. The mixing of liquids belonging to different owners, called *confusion,* and of solids, called *commixture,* are examples of additions to property made by the will of man. All these instances, like that of natural fertility, are comprised by jurists under the general name of *Accession* as a recognized title to property. In these latter instances, however, the law of nature is not so clear and definite. English law agrees with Roman in applying the maxim that what is accessory follows the principal when questions of ownership of the whole mixed property arise. Although the principle is quite in accordance with reason, yet reason does not seem to demand such a solution as peremptorily as it requires that the produce of the natural fertility of property should belong to the owner of that property. In fact, when we descend to particulars the principle is not applied absolutely and universally in Roman or in English law.

Thus, a gradual increase made to land becomes indeed the property of that land's owner by alluvion, but if the increase was made suddenly the property rights remain as before. So also if a piece of another man's timber is built into a house, the timber becomes the property of the owner of the house, but by law he must make compensation to the owner of the timber. Commixture is a species of accession where movables belonging to one owner are mixed with similar movables belonging to another. The principles of English law on the question are en-

tirely at one with those of the Roman law. The owners in general retain a right to claim a proportion of the mixture or its value.[1]

There is a special law with regard to money: "Si alieni nummi, inscio vel invito domino, soluti sunt, manent ejus cujus fuerunt. Si mixti essent ita ut discerni non possent, ejus fieri qui accepit, in libris Gaji scriptum est, ita ut actio domino cum eo, qui dedisset, furti competeret." [2]

Lugo applies and explains this law in the following interesting passage: —

> Si pecuniam furtivam non accepisti gratis, sed in solutionem alicujus debiti, et eam per admixtionem cum majori summa fecisti tuam, postea comparente domino pecuniae, ad nihil teneris; non enim ex injusta acceptione, cum bona fide acceperis; neque ratione rei acceptae, quia res accepta jam per admixtionem consumpta est, ac perinde se habet, ac si eam expendisses; nec denique teneris, quantum factus es locupletior, cum ea occasione nihil prorsus acquisieris lucri, sed habueris quod tibi alias debebatur: in hoc potissimum casu loquitur illa lex *Si alieni, de solutionibus,* quando dicit dominum pecuniae solum habere actionem contra furem; quia nimirum qui illam in solutum acceperat non fuerat factus ea de causa locupletior, et aliunde jam per admixtionem acquisierat ejus dominium.[3]

This seems to be modern English and American law: —

> Where a person [writes Mr. Attenborough] is entrusted with goods or money for a particular purpose and he misapplies the property with which he is entrusted, the pro-

[1] *Encyclopædia of the Laws of England,* s.v. Commixture.
[2] L. 78, Dig. De solutionibus.
[3] *De Justitia,* vi., n. 171.

ceeds of such misapplication may be claimed by the owner of the goods or money as, *e. g.*, if A delivers money to B to buy a horse for him and B buys a carriage with the money, A is entitled to the carriage. In such a case it makes no difference into what other form different from the original the change may have been made, whether it be into that of promissory notes for the security of the money which was produced by the sale of the goods, or into other merchandise; for the product of, or substitute for, the original things still follows the nature of the thing itself as long as it can be ascertained to be such, and the right only ceases when the means of ascertainment fail, *which is the case when the subject is turned into money, and mixed and confounded in a general mass of the same description.*[4]

Where it is to be observed that both according to Roman and English law the transference of dominion in the money is not ascribed merely to the receiving of it for value, but to the mixing or commixture of it with one's own moneys. It could be followed up if it remained separate and distinguishable, it cannot be followed up after mixture with one's own.

[4] *The Recovery of Stolen Goods*, 1906.

IV

OWNERSHIP AND RAILWAY FARES

Although *Mine* and *Thine* are, according to an ancient Father of the Church, cold and unsympathetic words, yet it is not likely that they will be banished from men's speech. They express facts and rights which are likely to be unchanged as long as human nature remains unchanged. In an ideal state of society, in which every member was perfect, it might be possible to have and enjoy all property in common, and to have no private ownership. But as long as most men will not work, unless to supply their personal needs, or those of their families, as long as most men are covetous and strive to get all they can for their own comfort and convenience, as long as most men are selfish and take little care of what belongs to other people, it will be impossible to do without private property. And so one of the main functions of society is to defend private ownership. Private ownership is recognized and defended wherever social life exists. As one of the great springs of effort and exertion it forms a valuable factor in the world's progress. Society which advances so slowly could not afford to dispense with so powerful an aid of advancement. Even if it wished to do so, the necessities of human nature as it exists would pre-

vent it. Not only progress, but peace and security require that each should have his own. If each one is protected in the peaceable possession of what his efforts have won, he has no right to complain; but there would be only too plentiful grounds of complaint and quarreling if the strong and capable were compelled to share on equal terms with the puny, lazy, and incompetent.

And so ownership is necessary for human nature as it exists. It does not owe its origin merely to positive law, it is anterior to positive law, which supposes it and safeguards it. Nature herself gives a man the right to own what is necessary and useful for his many wants; society, for the common good, defends that right.

Private ownership then is one of those primary rights which flow from nature herself. As a man has from nature herself the right to live, so he has also from nature the right to own what is necessary and useful to preserve his life.

Let us try to get a clear idea of what the right of ownership means and implies. What does a man mean when he says that this house is his? He means something quite different from what he means when he says that this boy is his son. In the latter case he means that he is the boy's father; which fact gives him the right and the duty of bringing the child up; he has the right, because he is the boy's father, to educate him, and to direct him in everything until he is able to look after himself. But this right is chiefly for the benefit of the boy, not for the benefit of the father. The boy is a human being, a person, a creature with

an intellect and free will, with a destiny of his own. He is free and independent, he does not exist merely for the benefit of his father, nor merely for the benefit of any other human being, or collection of human beings. He is a man, a person, like they are; he has his own separate end and destiny, which is not merely subservient to others. And so, though the father calls the boy his, his rights over him are not those of an owner. But when a man claims this house as his, he asserts that he is its owner. The house exists for the sake of the man, it has no destiny of its own, it was built for the man to live in, the whole reason of its existence is to serve his need and convenience. But in saying that the house is his, the owner means something more than that it exists for his benefit. He claims exclusive property in it. He has it in such a way that all others are excluded. He has the right to its exclusive use. Because he is the owner, he has a right to all the advantages that it is capable of conferring. The various uses that it can be put to, as, for dwelling in, or as a warehouse, belong exclusively to the owner; so that if any one, without the owner's permission, makes use of the house, he takes what belongs to another and violates the virtue of justice, which requires that we should give to every one his own.

So that ownership implies a certain connection between the thing owned and its owner, which gives him the right to its exclusive use, in such a manner that if another, without the owner's permission, take it or use it, he thereby violates justice.[1]

[1] Lugo, *De Just. et Jure*, i. n. 6.

If a man by force expels another from his house, and takes possession of it for himself, the injustice is obvious. But even if the house be empty, and without any violence being offered to the owner, if another against the owner's reasonable wish should make use of the house, he would take what did not belong to him, and would be guilty of a violation of justice. It might happen that no harm was done to the house. The intruder might unlock the door, use the house for a night's rest, and leave it in the morning just as he found it, neither better nor worse. And yet he would have committed an act of injustice in making use of what did not belong to him, against the reasonable wish of the owner.

This seems obvious and undeniable. It is expressly stated or taken for granted by theologians.[2]

It forms the basis of the distinction between the solemn and the simple vow of poverty. By the solemn vow of poverty the Religious renounces the ownership and the independent use of property; by the simple vow he only renounces the independent use. So that the vow of poverty can be violated not only by disposing of property, but also by using it without the requisite permission.

Again, the use of a thing may be the matter of ownership quite apart from the ownership of the thing itself. There is not only an absolute, but also qualified ownership of property in a great many different forms.

I may own not indeed the house, but the use of it. I may have a lease of the house for a certain num-

[2] Cf. Molina, *De Just. et Jure*, ii, d. 681, n. 8.

ber of years; and I have thereby as true a property in the house, though not so perfect and absolute, as if I were its owner. If I am unlawfully disturbed in the peaceful enjoyment of the rights which my lease gives me, an act of injustice is committed. Even the owner would violate justice, if he unlawfully, before the expiration of the lease, should resume the use of his own house. So that the uses of a thing may be the objects of property, and the subject-matter of justice and injustice, not less than the thing itself. If I let out a horse for hire, the hirer has a qualified property in the horse which cannot be interfered with without injustice. If I were, without the consent of the hirer, to make use of my own horse for a day, even though the hirer might not want him on that day, and might suffer no actual loss by my action, still I should be guilty of injustice, for I should have taken something which belonged to another.

And whenever I have taken what belongs to another against his will, then justice prescribes that I should give it back to him. For justice requires that every man should have his own; as long then as I have anything belonging to another against his reasonable wish, so long am I violating justice; if I desire my sin to be forgiven, I must not only repent of what I have done, but I must as far as possible make restitution, otherwise I am constantly and unjustly detaining what belongs to another. In other words, an act of injustice by which I inflict an injury on another, always imposes an obligation of making restitution as far as possible. If the robber, or the

thief, cannot restore the actual thing robbed or stolen, he must as far as possible give back an equivalent if there be one. It may happen that reparation for an injury is not possible, as in the case of adultery, where the right violated cannot be made good, and no equivalent can be offered. Or it may be that the owner does not care to exact an equivalent, or that a just equivalent is hardly determinable. Thus, if a neighbor against my will take a horse out of my stable and use it, I may be very angry on account of the injury done me, but I may not care to exact payment. I may have no intention of letting out my horses for hire. Or if a tramp makes himself at home in my house for the night without my knowledge and against my will, he does me an injury, but I should scarcely expect payment for the night's lodging. On the other hand, if one took a horse which was kept in livery-stables on hire, and used him for a day's journey, he would be expected, and bound in conscience, to pay the usual price for the accommodation he had received. And so too, if a man took the use of a bed-room for the night in a lodging-house, he would be obliged to give the ordinary price; for he had taken something which did not belong to him, which had its price, and that all may have their own, justice requires that this price be paid. And it is to be noticed that the obligation remains, even if no damage be done to another's property in these cases. It might happen that the horse from the livery-stables would not have been wanted for anything else on the day on which he was taken, and that he was not only no worse, but distinctly better for the exercise, yet

compensation would have to be made for its use; for the use of it had a money value, and that use belonged exclusively to the keeper of the livery-stables; therefore, that all may have their own, the just price must be rendered to him, otherwise justice will not be done.

It would make no difference with regard to the obligation of making restitution, if in this case the livery-stables were owned by a company and not by an individual. For companies are moral entities and moral persons, capable of possessing property not less than natural persons. An injury, therefore, against the rights of ownership is done to a company when its property is unwarrantably taken or used against the wish of the company. And justice, which requires that all should have their own, compels a thief, who has unlawfully taken or used the property of a company, to make restitution of the thing taken or its equivalent, just as in the case of thefts from individuals.

This duty of making reparation for violations of justice flows from the very nature of ownership and justice. It exists independently of any sanction or punishment imposed by the civil law. The thief, if discovered, is indeed amenable to certain pains and penalties imposed by the law, but, quite independently of the law, he is obliged in conscience to make reparation for his wrong-doing. The law does not create this obligation — it is a sign that it already exists.

What has hitherto been said is merely the ordinary teaching of Catholic theology concerning justice and the obligations which it imposes. As far as I

am aware, there is no theologian who would deny the principles which have hitherto been laid down. The doctrine is, I think, not only in accordance with right reason and the nature of justice, but it is supported by the unanimous authority of theologians.

We may make a direct and simple application of these principles to the question of paying the fare for traveling on the railway. The railway is owned by a company, whose exclusive property it is. The company has therefore a right, the natural right which belongs to all proprietors, to exclude all others from the use of the railway. If any one uses the railway against the wish of the company, he commits an act of injustice. The company, of course, sunk money in the railway in the hope of recouping itself by selling the advantages the railway offers to the public. The advantage of being carried so safely, easily, and quickly from one place to another is a convenience which is worth money. The use of the railway is a convenience which has its price, just as much as the convenience of a bed-room in a lodging-house. And just as one would act unjustly by making use of a bed-room in an hotel against the wish of the proprietor, with no intention of paying the ordinary price of the room, so one who travels on the railway with no intention of paying his fare acts unjustly. He makes use of the property of another against the owner's reasonable wish; that use is something which has a definite money value; he has taken the property of another against his wish; justice therefore prescribes that he should restore to the owner the price of the property that he has stolen.

We do not rest the conclusion on the question as to whether any damage has been done to the property of the company by the passenger or not.

It is sufficient to found the obligation of payment on the undoubted principle, that no one has a right to use another's property without his consent. If he does do so he commits an act of injustice; and if the use in question has a determinate money value, he has, against the reasonable wish of the owner, taken so much of another's property, he is a thief, and must make restitution. It is quite immaterial whether the place which he occupied would have been occupied by some one else or not. For even if I foresaw that a fishmonger would not be able to sell or make any use whatever of a stock of fish exposed for sale, I should commit a theft if I took any of his property without paying for it; so one who travels by railway without paying his fare, even though no other positive loss thereby accrues to the company, takes what does not belong to him, and must restore its value to the owner. The right to travel by rail is property which only the owners or those who buy it from them can use. As every one knows, the law of the land recognizes and enforces the obligation of paying one's railway fare, and punishes any one who seeks to escape the obligation. We have heard it discussed whether such a law is not a merely penal law. But a law cannot be merely penal which enforces a natural obligation. And, as we have seen, the railway passenger is under a natural obligation of paying his fare. To judge from the lists of convictions which are to be seen in our railway stations,

there would seem to be either some ignorance in the public mind on the moral principle of the question, or some laxity of conscience on the point. We have briefly treated the question from the point of view of moral theology.

V

LIBERALISM AND USURY

THE liberal creed, not very long ago the standard of religious, political, and social orthodoxy in Europe and America, is now held in its entirety by few. During the greater part of the nineteenth century it held undisputed sway. Learned professors taught its dogmas in the universities; critics took them for granted in their estimate of new productions in all the departments of learning; politicians assumed their truth as the basis of the laws which they enacted and the political measures which they adopted. Then sometime after 1870 a change began to set in. The appearance of socialism like a black cloud on the horizon, the open discarding of almost all moral restraint by large and increasing numbers, the frank avowal of hedonism as the only end of human existence, the squalor, the physical and moral hideousness of our large centers of population, all these causes began to produce their effect on thinking minds. Could this be the right road of progress after all? Were the doctrines and ideals which had led to these things founded on truth and in reality? Were the dogmas of liberalism so certain and self-evident after all? To put such questions was to shake the glittering but unstable edifice of liberalism to its

foundations. It soon became clear that the imposing structure was for the most part built up of no more solid materials than lath and plaster platitudes, and its occupants began to abandon it in streams. Even those stalwarts who refused to abandon the rickety dogmas of liberalism altogether, found themselves under the necessity of re-interpreting them and accommodating them to the changed conditions of the times.

The present seems a suitable opportunity for studying this remarkable movement in human history. To trace in outline, at least, some of its features will be interesting and not without instruction. I propose in this paper to take the subject of usury.

From time immemorial usury and usurer have been ill-sounding terms. The old civilizations of Babylonia as well as those of Greece and Rome had found it necessary to make usury laws. Philosophers, quietly studying the matter in the dry light of reason, had come to the conclusion that usury was a practice most contrary to nature. The Old and the New Testament condemned it. The Christian Church declared whoever denied that usury is a sin to be a heretic. The civil legislation of all Christian nations agreed in prohibiting and punishing it. But this consensus of opinion among the wisest and the best men who had ever lived was quite sufficient to grate on the liberal mind. The very fact that the doctrine was old, traditional, and universally accepted, made it repugnant to the liberal creed. In his celebrated letters on Usury, Bentham lays down the proposition " that no man of ripe years and of sound mind, acting freely and with his eyes open, ought

to be hindered, with a view to his advantage, from making such bargain in the way of obtaining money as he thinks fit: nor (what is a necessary consequence) anybody hindered from supplying him, upon any terms he thinks proper to accede to" (p. 2). In so many chapters of his book Bentham discusses all the reasons that the wit of man ever devised for restraining men's liberty from agreeing to pay what interest they liked for a money loan. He triumphantly refutes them all. Neither the prevention of the crime of usury, which indeed is only a bad name given to a quite laudable transaction, nor the prevention of prodigality, nor the protection of indigence, nor the protection of simplicity, affords rational grounds for usury laws. According to Bentham such laws are not only ineffectual: they are positively mischievous, inasmuch as they raise the rate of interest and thus increase the difficulties of the borrower. The historical prejudice against usury is readily explained as the fruit of envy and malice, for the spendthrift has ever been the favorite of mankind, if not of fortune, while one who saves and looks after his property has ever been unpopular. The celebrated passage in which Aristotle showed that money is barren is treated by Bentham with light banter and pleasantry. Bentham's *Defence of Usury* was published in 1787 and began slowly to produce its effect. By the middle of the next century it had so changed the opinions of lawyers, legislators, and business men, that in the year 1854 the usury laws were abolished in England. Most of the Continental nations quickly followed suit, and the view which

educated men generally took of the question was expressed with fitting conciseness and cocksureness by Lecky in his *History of European Morals*. He there writes: "When theologians pronounced loans at interest contrary to the law of nature and plainly extortionate, this error obviously arose from a false notion of the uses of money. They believed it to be a sterile thing, and that he who has restored what he had borrowed, has canceled all the benefit he received from the transaction. At the time when the first Christian moralists treated the subject special circumstances had rendered the rate of interest extremely high, and consequently extremely oppressive to the poor, and this fact, no doubt, strengthened the prejudice; but the root of the condemnation of usury was simply an error in political economy. When men came to understand that money is a productive thing, and that the sum lent enables the borrower to create sources of wealth that will continue when the loan has been returned, they perceived that there was no natural injustice in exacting payment for this advantage, and usury either ceased to be assailed, or was assailed only upon the ground of positive commands." [1]

It may be remarked in passing that if the sterility of money is an error, it was an error which was not shared by theologians alone. Philosophers, statesmen, lawyers, and the great bulk of mankind in general, were all on the same side. Lecky had no right to single out the theologians for his condemnation. But the reference to political economy is of most in-

[1] *History of European Morals*, i., p. 94.

terest to us at present. "The root of the condemnation of usury," says Lecky, without a shadow of doubt on the matter, "was simply an error in political economy." Like a good liberal, Lecky invokes the dogmas of political economy; anything which is contrary to them cannot be sound. However, since Lecky wrote, this particular dogma of the political economy which was then in vogue has been exposed to many a rude shock from several different quarters. The historical school of political economists, represented in England by such men as Professor Ashley and Dr. Cunningham, has pointed out that, although the modern conditions of industry and trade may make it perfectly reasonable to charge and receive interest on a loan of money, it does not follow that it would be reasonable under all conditions. On this point it will be of interest to quote the words of the present Lecturer in Economic History in the University of Oxford:

With our modern knowledge and experience [writes Mr. L. L. Price], we think it foolish and mischievous to prescribe a legal maximum rate of interest, beyond which no one may legally lend or borrow. We argue that the effect of such a law is not to prevent the needy man from borrowing at a higher rate, but to make him pay still more, to compensate the lender for the risk which he runs of being detected by the law, and losing both interest and principal. We point to the means by which such laws could be evaded, and we contend that it is better to leave matters to the ordinary market influences, making stringent provisions, and devoting our efforts to the enforcement of these provisions against violence and fraud. And so we pass an unqualified condemnation upon the usury laws.

But if with such an historical economist as Dr. Cunning-

ham in his *Growth of English Industry and Commerce,* or Professor Ashley, in his *Economic History,* we shift our standpoint, and go back in imagination to the state of medieval society, and supply the circumstances of historical fact amid which these laws were enacted, we begin to qualify our condemnation. We see that there was no such opportunity for the investment of capital as there is now, and that the possessor of a large sum of money could scarcely apply it to any productive enterprise or use it himself in such a way as to realize a profit. If then he lent it, and the security were good, and the money repaid, he rendered a service to another man, but himself sustained no loss. Nor was it the prosperous who would borrow, but the poor in distress, to relieve whom was the Christian duty of the rich. To ask then for more than the simple repayment of loans appeared to be extortion, and plainly immoral.[2]

This is very different from the tone of Lecky. The outlook of the Oxford Professor is wider, and consequently his judgment is more tolerant. But an attentive consideration of the facts will show us how well founded this tolerant judgment is, and enable us to be still more tolerant. Although, of course, money existed in the Middle Ages, it was comparatively scarce and formed but a small portion of the national wealth. Landed property was by far the most important form of wealth; personalty, which now far exceeds realty in value, was then almost a negligible quantity. Municipal law regulated the succession to landed estate and imposed on it the chief part of the public burdens of the state. Personalty was too insignificant to attract the attention of the revenue officers of the crown, and of the civil

[2] *Political Economy in England,* p. 131; ed. 1907.

lawyer, and accordingly it fell under the jurisdiction of the Church. This seems to be the explanation of the remarkable dichotomy which is observable still between the English law of realty and of personalty. But money was not only scarce in the Middle Ages; its functions were restricted to providing a measure of value and a ready means of exchange. As yet it scarcely existed as capital, capital being taken to mean a stock of money which can be readily applied to different productive enterprises which offer an opportunity for gain. Especially in the country parts a natural economy still prevailed in England in the thirteenth century.[3] The population was fixed to the soil and obtained a livelihood from the produce of the small holdings which it held of the lord, or from rations distributed by him in consideration of services rendered. The great households lived on the produce of their estates, and when the produce of one estate was exhausted they moved to another. Even in the towns trade was fettered by all sorts of laws, customs, and regulations. It was organized in gilds subject to strict prescriptions as to the conduct of business and as to the number of journeymen and apprentices who might be employed. The master-workman had indeed his necessary stock of implements, but the material on which he worked was often supplied by his customers. The board, lodging, training, which his apprentices received in the master's house, and their hopes of succeeding to the business in due time, almost dispensed with the need of capital for wages. Machinery, of course, which

[3] W. Cunningham, *Growth of English Industry*, i., p. 244 (1905).

brought about the industrial revolution a century ago, was still in the womb of the future. As Dr. Cunningham writes: "In dealing with the Christendom of earlier ages we have found it unnecessary to take account of capital, for, as we understand the term in modern times, it hardly existed at all. In the fourteenth and fifteenth centuries we may notice it emerging from obscurity, and beginning to occupy one point of vantage after another, until it came to be a great political power in the State." [4]

But if the functions of money in the Middle Ages were almost confined to furnishing a measure of value and a medium of exchange, if it hardly at all, or only by way of exception, existed as capital, the only valid reason for exacting interest on a loan of money was necessarily something extrinsic to the loan itself. If risk was incurred by lending the money, or if there were loss to the lender because he was obliged to withdraw money from a profitable enterprise in order to make the loan, the lender of money was of course justified in exacting interest for his loan. He was not bound to benefit his neighbor with loss to himself, except when an alms was due out of charity; it was only right, and acknowledged as such by everybody, that the borrower should recoup the lender for any loss that the latter incurred by making the loan. But if the lender incurred no such loss, if the money would lie idle and useless in its owner's coffers unless it were lent, and if it was as safe or safer in the hands of the borrower and sure to be restored at the time agreed upon, then there was no ground for de-

[4] *Western Civilization*, ii., p. 162 (1900).

manding interest on a loan. The money would be borrowed to discharge a debt, to pay a contribution levied by the overlord, to pay a fine, or perhaps to purchase wine or some other article of luxury; the borrower made nothing by it: the only functions of money as yet were its uses as a measure of value and a medium of exchange. It passed out of the hands of the borrower in fulfilling these functions; he derived no profit from its use; it was what canonists called it, a fungible, a good consumed as far as its then owner was concerned in the very first use of it. There is no ground for charging interest here. The price of a good which is consumed in the first use of it is the price of that use. Professor Cassel writes: "All economic goods may be divided into two categories, those which satisfy our wants in being consumed at once, and those which afford a series of useful services before they are worn out. Food is an instance of the former category, houses of the second. This line of subdivision is one of the most fundamental in economic science. The price paid for an article of immediate consumption is of course the same as the price paid for the use of this article. This is not so in the case of an article belonging to the second category. The price paid for the single useful service it affords is one thing; the price paid for the article itself is quite another thing." [5]

Inasmuch then as money in the Middle Ages was not yet a form of capital (an instrument for the production of wealth); inasmuch as its only functions, speaking generally, were to serve as a measure of

[5] *The Nature and Necessity of Interest*, p. 86 (1903).

value and a medium of exchange, and no profit was as a rule made on a money loan by the borrower, the Church was quite right in teaching that in these circumstances there was no justification for taking interest on a loan of money; that to do so was to commit the sin of usury.

But, it may be said, the Church's action in this matter put a restriction on trade and hindered the development of commerce. In reply to this common objection it may be said that it was not the Church which imposed the restriction, but natural justice and fair dealing. Justice and fair dealing are sometimes a restriction on trade nowadays, but nobody thinks of blaming the magistrate for requiring the rules of justice and fair dealing to be observed by traders.

Beyond this it may be doubted whether the laws against usury were in fact any great restraint on trade. Trade was then in the hands of special gilds, or companies, largely confined to towns and occasional fairs, and hemmed in on all side by laws, customs, and jealously guarded privileges. Ordinary people had no loose capital to employ in trade, and if they had had it, gentlemen would never have demeaned themselves so far as to become hucksters for gain. Any one who had capital and had the necessary status in the appropriate gild of his town would find no difficulty in employing his capital by entering into partnership with others in some mercantile enterprise, or employing an agent to trade for him, or embarking in trade on his own account. The Church made no difficulty about profit being gained in trade if only the trade were honest. It may then

be safely asserted that the usury laws imposed no undue restrictions on trade.

One of the chief differences between the Middle Ages and modern times is that money has become capital in the interval. Some would say that this is the fundamental difference between the Middle Ages and our own times, and the cause of all other differences. No precise date can be assigned for the beginning of the capitalistic age. As Dr. Cunningham says: "It would be still more hopeless to try to treat the intervention of capital as an event which happened at a particular epoch, or a stride which was taken within a given period. It is a tendency which has been spreading with more or less rapidity for centuries, first in one trade and then in another, in progressive countries. We cannot date such a transformation even in one land; for though we find traces of capitalism so soon as natural economy was ceasing to be dominant in any department of English life, its influence in reorganizing the staple industry of this country was still being strenuously opposed at the beginning of the present [nineteenth] century." [6]

Whenever the change took place, money is certainly capital now, and one of its principal forms. Any one who has saved a sum of money finds no difficulty nowadays in employing it productively, innumerable investments of all sorts compete for the money of the capitalist, and little or nothing can be done without its aid. The whole world lies helpless in the toils of Moneybags, as the socialist bitterly complains.

[6] *Western Civilization*, p. 163.

Will the fact that in the conditions of modern life money has become capital serve to explain and justify the taking of interest on a loan of money? The socialists angrily deny it. They maintain that Aristotle and the Christian Church were perfectly right when they condemned interest and usury as contrary to nature. Money, they say, is always and essentially barren. All wealth is produced by labor, as Adam Smith, Ricardo, and the classical school of economists, taught. The classical school of economists, however, wrote in favor of the moneyed classes, and they carefully abstained from drawing the obvious conclusion from this fundamental principle of modern socialism. If labor produces all wealth, then all wealth is the fruit of labor and belongs to the laborer by natural justice. The laborer indeed needs capital, and to get it he is obliged to have recourse to the capitalist, who takes the opportunity to rob him of a portion of the fruit of his toil. The capitalist as such does not work; the money which he lends produces nothing; all the produce is due to labor. The capitalist would obtain all that is due to him if his loan without interest were paid back to him at the time agreed upon. The laborer produces more than is absolutely necessary for his support by working long hours and exhausting his strength; he thus produces surplus value; but instead of enjoying all the fruit of his labor himself, as in justice he should do, he is compelled to hand over the surplus value to the capitalist to pay interest on his loan. The capitalist then is nothing better than a robber of the worst type; he lives on the plunder of the poor.

Anti-socialists have no difficulty in showing that this reasoning is utterly fallacious. The fundamental principle that labor is the only source of wealth is false. Labor is indeed one of the sources of wealth; but it is not the only nor the chief source. Those commodities which can be produced in any quantity at will by common labor do indeed tend to gravitate in value toward the cost of the labor which produced them; but beyond this it is impossible to go with the labor principle. Land, mines of all sorts, forests, diamonds and precious stones, works of art, scarce objects of value, patent goods, have a value altogether out of proportion to any labor that may have been spent on them and independent of it. Even in those goods which to some extent illustrate the partial truth of the labor principle, the price is seldom an exact equivalent of the cost of the labor bestowed on them. The fluctuations of supply and demand are constantly tending to disturb the equilibrium.

Machines and other products of inventive genius are not merely crystallized labor, as Marx and the socialists contend. They are means by which the forces of nature are subdued and harnessed and made to labor for the benefit of man, multiplying the fruits of his toil twentyfold or a hundredfold. The work done by a steam-engine on the railway is not merely the reproduction of the labor bestowed on its manufacture plus the labor of the engine-driver and the stoker: the steam-engine is an instrument by means of which the energy stored up in coal and steam is captured and made to work in the service of man.

As Mr. Mallock says, it is not merely crystallized labor; it is crystallized mechanics, crystallized science, and crystallized inventive genius, working with the forces of nature.

Although the socialist reasoning is unsound and fails utterly on its constructive side, it has served to discredit the classical political economy from which source it derived its fundamental principle. Furthermore it has compelled anti-socialists to examine more deeply into the grounds of interest with a view to its explanation and justification. It has been found that it is by no means an easy task to explain how capital produces interest, and to justify that interest. Böhm-Bawerk, the celebrated Austrian economist, after many years of study, wrote two books on the problem — *Capital and Interest* and *The Positive Theory of Capital.* The first is an exhaustive history and criticism of the numerous and varied theories that have been advanced in explanation of the matter, and the second contains a lengthy exposition of his own view. After an interesting historical account of the canonist doctrine on usury, Böhm-Bawerk discusses the modern theories, grouped under four heads: the Productivity, Use, Abstention, and Labor or Exploitation theories. We have already seen something on the last head; a word must now be said on the others.

The production of wealth, or of economic goods, or of those material conveniences which meet our wants and have an exchange value, is commonly said to be the result of the action of three factors — land, capital, and labor. The produce is due to the activity of

these three factors, and so it is only equitable that a share in the distribution of the product should fall to each. Rent thus goes to land; wages to labor; and interest to capital. That this happens in fact is of course a matter of daily experience; but according to Böhm-Bawerk it does not explain the phenomenon of surplus value. The natural fertility of land aided by labor certainly produces economic goods; a share of the produce therefore is in justice due to the owner of the land and to the laborer. But what does money used as capital produce? Even if it aids in the production of goods, it does not follow from this that it produces values, much less surplus value, and the emergence of surplus value is the phenomenon to be explained. Whatever value the product has is due, says the Productivity theory, to the factors of production. Two parts are due respectively to land and to labor; the third is due to capital. But all the value that there is in this third portion of the product was already in the capital when it was applied to production. The productivity of capital then cannot explain the emergence of surplus value in the shape of interest on capital.

The Use theory is a modification of the Productivity theory, and it asserts that interest is due to the use of capital. This theory fails to recognize the great economic fact, insisted on by the Schoolmen, and the foundation of the canonist doctrine on usury. Capital has no use beyond its consumption. When the borrower has paid for its consumption or use, he has paid for the capital; and when he has paid for the capital, or stock of money, he has paid also for its

use. Böhm-Bawerk is fully conscious that the prejudices of most modern economists are against him in this matter. "It is indeed," he says, "essentially the same question as was in dispute centuries ago between the canonists and the defenders of loan interest. The canonists maintained that property in a thing includes all the uses that can be made of it; there can, therefore, be no separate use which stands outside the article and can be transferred in the loan along with it. The defenders of loan interest maintained that there was such an independent use. And Salmasius and his followers managed to support their views with such effectual arguments that the public opinion of the scientific world soon fell in with theirs, and that to-day we have but a smile for the 'short-sighted pedantry' of these old canonists. Now fully conscious that I am laying myself open to the charge of eccentricity, I maintain that the much-decried doctrine of the canonists was, all the same, right to this extent — that the independent use of capital, which was the object in dispute, had no existence in reality. And I trust to succeed in proving that the judgment of the former courts in this literary process, however unanimously given, was in fact wrong."[7] Böhm-Bawerk goes to the roots of the question and shows conclusively the truth of his contention that the scholastics on this point were certainly in the right.

The Abstention theory, worked out by Senior and others, looks upon interest as the reward of abstaining from the immediate consumption of one's wealth. Capital is the fruit of saving; to save I must abstain

[7] *Capital and Interest*, p. 215.

from immediate enjoyment; this abstention deserves compensation, which it receives in the form of interest on the capital devoted to production. Lassalle and the socialists poured ridicule on the idea of the abstinence of the capitalist. The idea of a Rothschild or a Carnegie, who cannot consume their wealth with the best intention in the world to do so, and who yet deserve reward for their abstinence, was too ridiculous in socialists' eyes. Böhm-Bawerk, however, prefers this theory to any of the others, and indeed it is closely allied to his own. That in brief consists in this. The problem of interest is a problem of value, and value depends upon facts of psychology, upon the wants and estimates of men who desire the satisfaction of those wants; but it is part of man's nature to esteem future goods less than present goods of the same sort and quality; so that $100 possessed at present is equal in value to $105 a year hence. Therefore in charging five per cent. interest on the loan of $100 for one year the lender is merely demanding an equivalent in value for his loan. Böhm-Bawerk's criticism has had a great effect on modern economic thought; but his own view has not met with anything like general acceptance. Objections to it have been raised on the ground that it is by no means new as Böhm-Bawerk seems to suppose, and that it explains nothing. Granted that in common estimation $100 of cash in hand is worth $105 to be paid a year hence, what reason can be assigned for this common estimation? It does not seem to be an ultimate fact of human nature. A bird in the hand is ordinarily indeed worth two in the bush; but this is because of the un-

certainty whether the two in the bush will ever be in the hand. If the birds were securely fixed in the bush by quicklime so that they could be taken at pleasure, two birds in the bush would be worth two in the hand, perhaps even more under certain circumstances. Similarly it is the element of uncertainty, or present need, or a good opportunity for immediate and profitable investment, which makes $100 in possession worth $105 a year hence. If these elements are excluded it is quite conceivable that in certain circumstances common estimation would consider $99 to be paid a year hence a fair equivalent for $100 of present money. The possibility of the rate of interest sinking below zero, and the depositor having to pay the banker for keeping his money safely for him, is recognized by economists of standing.

Böhm-Bawerk, with other economists of the Austrian school, adopted the theory of marginal utility to settle the value of commodities. In substance the theory amounts to this. Prices of commodities depend on subjective valuations of buyers and sellers from first to last. A cobbler, for example, has made a number of pairs of shoes, of which some are for sale. What will be the price per pair? He wants some for his own use and for the use of his family; the subjective value of the pairs of shoes necessary to supply these wants will be very high. A change of shoes is desirable; but still a second pair will not have such subjective value as the first pair has. Then in descending scale of subjective value a third pair may be desirable to supply the place of one nearly worn out, and so on to the last pair, the pair that the cobbler

could most easily do without. The utility of this last pair of shoes is the marginal utility, and according to the theory which we are discussing, it settles the subjective valuation of a pair of shoes for the cobbler, so that he will sell a pair at that price if he cannot get a higher, but he will not take a lower. Similarly, a buyer of shoes has his scale of subjective valuations, and he will not give more than the maximum among them. Market prices are the equilibrium established between the opposing desires of buyers and sellers, and they are fixed by competition somewhere between the highest valuations of the buyers and the lowest of the sellers. This theory of prices is being attacked in England, France, and Germany, as unreal and as not agreeing with facts, as well as for being too subjective and too individualistic. Many writers who are not socialists maintain that exchange value supposes a constituted society of men, and that it is the social estimate of society which is the cause and the measure of exchange value. This is precisely the doctrine of the common estimation, the standard of prices according to the Scholastics, rediscovered by modern economists.

The whole situation is one of great interest for the theologian. He sees that not only England, but Austria, Germany, and other Continental nations have reverted to usury laws in less than fifty years after they had discarded them; some main elements in what we may call the political economy of the Catholic Church are being brought back with honor from the ignominious exile into which they had been thrust by the liberal school. The dogmas of that school are

decried and reprobated not only by socialists, but by the most accredited economists. Will the canonist doctrine on usury come to be generally recognized again as true? We have no hesitation in saying that there is every prospect of it, that in fact this is largely the case already, but that ignorance of what the real canonist doctrine was prevents the general recognition of the fact. The substance of the canonist doctrine on usury consisted in the assertion that *per se* it is against justice to demand a price for a money loan over and above the restitution of the loan itself. In the matter of money it is not possible to distinguish the price of the substance of a loan and the price of its use, as it is possible to distinguish the price of a house and the price of a lease of the same house. While insisting on this the canonists readily admitted that there were certain extrinsic titles for exacting interest on a loan of money. In other words, they taught that circumstances may justify interest on a loan which in other circumstances would be unjust. This is quite a common opinion among recent economists, and it has been adopted and developed by such an authority as the American economist F. A. Walker. Modern capitalism seems to be such a circumstance. Nowadays a man may readily borrow $5000 without anything passing between lender and borrower besides a piece of paper. With this loan the borrower can easily purchase land, machinery, shares in commercial or industrial companies, or other agents of production where the distinction between the value of the substance of the good and the value of its use and product is quite valid and legiti-

mate. Money thus used is capital, and it represents, and is in modern times readily exchangeable for, all sorts of productive goods. Money then used as capital is virtually productive, and for all practical purposes it may be looked upon as a productive good itself. As Professor Cassel says: "The most important achievement hitherto obtained by the discussion, which has been going on for so many centuries, is that the question, For what is interest paid? may now be regarded as definitely settled. It is stated, once for all, that interest is the price paid for an independent and elementary factor of production which may be called either waiting or use of capital, according to the point of view from which it is looked at." [8] If this be conceded, and I think that in the circumstances of the modern capitalistic world we need have no difficulty in conceding it, the question of usury is settled for the theologian.

[8] *Nature and Necessity of Interest*, p. 67.

VI

THE SUM REQUIRED FOR A GRAVE SIN OF THEFT

The virtue of Justice forbids us to injure our neighbor, and this obligation is of its nature grave, as all theologians admit. Still, if the matter be trivial an offense against justice is no more than a venial sin, as all agree. The well-known lines: —

> It is a sin
> To steal a pin,
> Much more to steal
> A greater thing

may be as faulty from the strictly theological standpoint as they are from the poetic; but for all that they express the theological truth that the matter determines whether a sin against justice is grievous or venial.

But when does the matter become sufficient to constitute a mortal sin? Theologians have always considered this a difficult question to answer. And yet it is a question of great practical importance for the confessor, not only that he may know when he must require restitution to be made under pain of refusing absolution, but also for measuring the guilt of violations by religious of their vow of poverty; for this question is settled on the same principles. Nearly

all theologians who treat of justice discuss this question; and of late there has been a tendency in certain quarters greatly to increase the sum which others commonly assign as necessary and sufficient for a mortal sin of theft. Unless I am much mistaken, they have increased it unduly, and for reasons which have no validity; so I propose briefly to examine the question again, and in doing so I will make use of the labors of economists. For although the question belongs to theology, still, as we shall see, its solution partly depends on certain data which belong to economics, and on these it is only right that economists should be heard.

Since about the time of Lugo († 1660) it has been a common opinion among theologians that it is a grave sin of theft to rob a working man of a sum which is sufficient to support him and his family for a day. The reason for this doctrine is obvious and satisfactory. For that quantity will be sufficient for a mortal sin, whose theft causes a notable injury to the owner, an injury which ordinary men of prudence and sense consider serious, and which is sufficient to upset them considerably. This is the test which is applied in other matters where there is question of the grave breach of a moral law which admits of parvity of matter. When theologians settle what omission of the Office by a priest, or of Mass on a Sunday by the faithful, or what quantity of servile work on a holy-day of obligation is mortally sinful, they ask themselves what quantity of the matter prescribed or forbidden, as the case may be, is notable and considerable, having regard to the subject matter,

the end of the precept in question, and the intention of the lawgiver. In the same way, when we wish to know what sum is sufficient for a grave sin of theft, we consider how important it is for maintaining peace among men that property should be secure; what quantity of money or commodities is looked upon as considerable with a view to the use that can be made of them; and what quantity will, with reason, cause the owner serious concern and chagrin if he is unjustly deprived of it. Now, to a workman, or indeed to any one who has to earn his living, the loss of what will support him and his family for a day is a serious matter; it practically means that he has worked a whole day for nothing, and such a loss causes most men, with reason, to be seriously put out. So that we may take it as fairly established doctrine that the theft of such a sum will keep the owner and his family for a day is a grave sin.

This rule, however, will only serve in those cases where theft has been committed against one who earns his living, or at any rate, who is not very rich. It cannot be applied to wealthy companies, or governments, or to millionaires, who would hardly feel the loss of a day's support in however grand a style they live. And so in such cases we must have recourse to other considerations in order to find what quantity will constitute a grave sin of injustice when stolen. Here we consider, not so much the loss caused to the owner of the property, as the wrong done to public order and to the security of property. Public and private interests require that property should be safe; public as well as private interests are seriously jeop-

ardized when notable injuries to property are of frequent occurrence. All this is but saying in other words that the public weal requires that theft of a considerable sum must be forbidden in all cases, as a grave violation of justice, by the natural law. A prohibition, under pain of venial sin, not to steal a considerable sum of money, would not be sufficient to safeguard the rights of property. In other words, theft of what is commonly at a certain time and place considered a notable sum of money, will be sufficient to constitute a mortal sin of theft, even when the owner of the property stolen is not sensibly the worse off.

We have now arrived at a principle for measuring the quantity which will be grave matter in theft, independently of the harm done to the owner who is wronged. But there remains the great difficulty of determining the quantity which public and private interests require should not be stolen under pain of committing grievous sin. The value of money is constantly changing, and differs considerably in different places; the quantity of money, too, in a country varies greatly with the growth or decrease of national wealth, and so, a sum which was considerable at one time would cease to be so at another. This truth is illustrated very well by the change in the opinions of theologians from age to age on this point. Navarrus, in the sixteenth century, taught that a sum equivalent to about twopence-halfpenny of our money was sufficient for a mortal sin of theft. This opinion, however, was commonly rejected as too severe. Sanchez says that the more common and the truer

opinion fixed the sum at one shilling and eightpence. Lugo, a generation later, called attention to the change in the value of money which had been caused by the large influx of the precious metals from America. He asserted, that where formerly fifty gold crowns sufficed for support, three times that sum did not suffice in his day. And so, following the example of other recent authors, as he says, he put the sum required for grave theft, in the case of very rich lords and kings, at five shillings. St. Alphonsus thought five shillings sufficient in the case of rich lords, but for kings he put the sum of ten shillings. Modern theologians agree in still further increasing the amount. Haine and Marc increase it to between twenty and twenty-five francs; D'Annibale and Bucceroni to between twenty and thirty francs; Kenrick and Sabetti to five dollars; Lehmkuhl to between twenty and thirty shillings; Berardi to between thirty and forty francs; Génicot and Waffelaert to forty francs. Lehmkuhl thinks that for England and America, on account of the less value of money in those countries, thirty or forty shillings would be required for a grave sin. Father Ojetti [1] goes further than any one else that I have seen, and says that a sum under four pounds would not be grave matter.

All these theologians, as was to be expected, attach great weight to traditional teaching on the point, but on account of the continual depreciation of money, they think the amount required for grave theft continually increases. Génicot, to take one example, says: —"Nec videtur haec ultima computatio [forty

[1] *Synopsis rerum moralium*, s.v. "Furtum."

francs] pro regione nostra modum excedere, si attenditur ingens mutatio quae in valore pecuniae facta est a tempore quo multi auctores quos citat S. Alphonsus duos vel tres aureos [fifteen francs] requirebant." [2]

The very great depreciation in the value of money, then, is the reason why he selects a sum eight times as great as that assigned by Lugo and others in the seventeenth century, and three times as much as the most liberal of those who are quoted by St. Alphonsus. This reason is not theological, it rests on a question of fact: has money, in reality, depreciated so much in value during the last two or three centuries? This is a question belonging to economics, a difficult question, as all admit, but one on which great labor has been spent, and with regard to which fairly certain conclusions have been reached, though no pretense can be made to mathematical accuracy.

Professor Bastable, one of our greatest authorities on monetary questions, gives in the *Encyclopædia Britannica*,[3] a general history of the changes which have taken place within historical times in the value of money. Concerning the period with which we are dealing, he writes: —

> The annual addition to the store of money has been estimated as £2,100,000 for the period from 1545 to 1600. At this date the Brazilian supply began. The course of distribution of these fresh masses of the precious metals is an interesting point, which has been studied by Mr. Cliffe Leslie. The flow of the new supplies was first towards Spain and Portugal, and from thence they passed to the

[2] Vol. I., n. 497.

[3] S. v. "Money."

larger commercial centers of the other European countries, the effect being that prices were raised in and about the chief towns, while the value of money in the country districts remained unaltered. The additions to the supply of both gold and silver during the two centuries 1600–1800 continued to be very considerable; but, if Adam Smith's view be correct, the full effect on prices was produced by 1640, and the increased amount of money was from that time counterbalanced by the wider extension of trade. At the commencement of this century [nineteenth] the annual production of gold has been estimated as being from £2,500,000 to £3,000,000. The year 1809 seems to mark an epoch in the production of these metals, since the outbreak of the revolts of the various Spanish dependencies in South America tended to check the usual supply from those countries, and a marked increase in the value of money was the consequence. During the period 1809–1849 the value of gold and silver rose to about two and a half times their former level, notwithstanding fresh discoveries in Asiatic Russia. The annual yield in 1849 was estimated at £8,000,000. The next important date for our present purpose is the year 1848, when the Californian mines were opened, while in 1851 the Australian discoveries took place. By these events an enormous mass of gold was added to the world's supply. The most careful estimates fix the addition during the years 1851–1871 at £500,000,000, or an amount nearly equal to the former stock in existence. The problems raised by this phenomenon have received the most careful study by several distinguished economists, to whose writings those desiring more extensive information may refer. The main features of interest may be briefly summed up . . . (2) The contemporaneous development of the Continental railway systems, and the partial adoption of free trade, with the consequent facilities for freer circulation of commodities, led to the course of distribution being different from that of the sixteenth century. The more backward districts were the principal gainers, and a more

general equalization of prices, combined with a slight elevation in the value, was the outcome. . . . (4) The change in the value of money, which may for the period of 1849–1869 be fixed at twenty per cent., enabled a general increase of wages to be carried out, thus improving the condition of the classes living on manual labor. It may be added that the difficulty of tracing the effects of this great addition to the money stock is a most striking proof of the complexity of modern economic development.

This general sketch is fully borne out by the results obtained by other workers in the same field. The following table was drawn up by the Vicomte d'Avenel, and is borrowed from Palgrave's *Dictionary of Political Economy*, iii. p. 193: —

TABLE OF THE COMPARATIVE PURCHASING POWER OF EQUAL WEIGHTS OF THE PRECIOUS METALS AT DIFFERENT PERIODS IN FRANCE:—

PERIOD.			PERIOD.		
1451–1500	about	6	1651–1675	about	2
1501–1525	"	5	1676–1700	"	2⅓
1526–1550	"	4	1701–1725	"	2¼
1551–1575	"	3	1726–1750	"	3
1576–1600	"	2½	1751–1775	"	2½
1601–1625	"	3	1776–1790	"	2
1626–1650	"	2½	1890	"	1

To show the changes in the value of money during the last century, we can avail ourselves of the Index numbers calculated for this purpose by able economists, such as Jevons and Sauerbeck. They give the prices of a large number of the chief commodities in gold for each year. I subjoin a table composed of the Jevons' Index numbers for the years 1782–1839, and of Mr. Sauerbeck's to 1905. These Index num-

bers show us whether gold increased or decreased in value, and what the increase or decrease was approximately, for each year.

Period.	Jevons' Ind. No.	Period.	Sauerbeck Ind. No.
1782–84	.. 97	1840–44 (Jevons, 77)	.. 92
1785–89	.. 87	1845–49	.. 85
1790–94	.. 93	1850–54	.. 85
1795–99	.. 120	1855–59	.. 98
1800–04	.. 126	1860–64	.. 101
1805–09	.. 138	1865–69	.. 100
1810–14	.. 125	1870–74	.. 104
1815–19	.. 111	1875–79	.. 91
1820–24	.. 92	1880–84	.. 83
1825–29	.. 88	1885–89	.. 70
1830–34	.. 79	1890–94	.. 69
1835–39	.. 85	1895–96	.. 62
		1896–1905	.. 68

If it were necessary, the results that we have obtained might be corroborated from other sources, but they will, perhaps, suffice for our purpose.

We find then that from the end of the fifteenth century to the middle of the seventeenth gold decreased in value as 6 : 2; the Vicomte d'Avenel's figures fully bear out the correctness of Lugo's estimate quoted above; from that time till the end of the eighteenth century, the value of gold remained fairly constant; it sank during the revolutionary wars with France; after Waterloo it rose until about 1850, when it began to sink again till about 1870, since which time it has been rising gradually. The Vicomte d'Avenel calculated that the purchasing power of equal weights of the precious metals in France in 1790 and in 1890 was as 2 : 1, in other words, the net result of the fluc-

tuations in the value of the precious metals during the nineteenth century was that their value decreased by about one-half.

These conclusions agree with what might be expected on general principles. For the value of the precious metals, as of other things, depends on supply and demand. If the supply is increased, other things remaining the same, the value will fall, as was the case with gold when the vast stores from America had been distributed through the commercial centers of Europe in the sixteenth and seventeenth centuries. During the next century and a half trade developed, population increased, and the greater number of business transactions demanded a larger supply of money. The demand was equal to the supply, and in spite of the constant influx of gold, its value remained much the same for a century and a half. The revolt of the South American colonies from Spain tended to check supplies from that quarter, and gold rose in value till the discovery of the mines in California and Australia. The quantities drawn from thence caused gold to depreciate till about 1870, when the growing expansion of trade, the adoption by Germany and other countries of a gold standard of currency, together with other causes, brought about an appreciation of the precious metal.

The evidence, then, from Political Economy shows that gold has, indeed, depreciated in value since the time of Lugo, but that the amount of the depreciation is not nearly so great as some modern theologians suppose. If we say that the value of gold in Lugo's time was twice as much as it is now, we shall prob-

ably not be far wrong. So that if we take the opinion of Lugo and other great theologians of his time, as an accurate estimate of the quantity required for a grave sin of theft, we shall arrive at the sum required to-day on account of the depreciation in the value of money, by multiplying Lugo's five shillings by two. If we adopt the more liberal estimate of Laymann and others, we must double this amount, and say that the theft of more than twenty shillings is always a grave sin. However, besides the depreciation of money, other circumstances have to be considered, as we shall presently see.

Father Lehmkuhl[4] thinks that in England and in the United States, where, he says, the value of money is less than in other countries, a sum of from thirty to forty shillings is required; whereas in other countries twenty to thirty shillings would be sufficient for the absolute sum necessary for a mortal sin of theft.

It is, of course, possible that money may have a greater value on the continent of Europe than in England and the United States. But this, again, is not a theological question, it is a question of fact, though a very complex one, and one very difficult to solve satisfactorily. Just as the value of commodities is measured by money, so the value of money is measured by what it will exchange for. If one pound will purchase more commodities of the same quality in Germany than in England, then the value of money is greater in Germany than it is in England. And if this be the case, a mortal sin of theft will be committed by

[4] Vol. I., 931 note.

stealing a less sum of money in Germany than in England.

Of course it is perfectly true that a pound will purchase more of some commodities in Germany than in Great Britain. It will purchase more wine in the Rhineland, otherwise Rhenish wine would not be imported to England. On the other hand, it will not purchase more cotton goods, or else we should not export those articles to Germany. But the value of money depends on its general purchasing power, not on its power of purchasing more or less of one or two commodities. The general purchasing power of money is proximately determined by the law of supply and demand. If the supply of money increases relatively to the supply of other commodities for sale, its value decreases; if the supply decreases its value augments. Moreover, whenever an object has a higher value the greater demand attracts supplies until a common level is reached. Money obeys this law like any other commodity, and the vast improvement in means of communication which the last hundred years have witnessed, the facility and cheapness of carriage, the intimate commercial relations which now exist between all the countries of the civilized world, tend to equalize values, if we neglect tariffs and the cost of transit. So that, although we should allow still for some difference in the value of money in the different countries of the civilized world, it is probable that the difference is not great. Professor Bastable says:[5] "At present it is quite natural to assume that the materials of money are distributed

[5] *Encycl. Brit.*, s.v. "Money."

by means of international trade, and tend to keep at an equal level all the world over,— an assumption which is in general well grounded, though an important exception exists with regard to the East."

Professor Marshall, one of our greatest English economists, is of opinion that money is now of greater value in England than in France. He writes: —[6]

> Free trade, improvements in transport, the opening of new countries, and other causes have made the general purchasing power of money in terms of commodities rise in England relatively to the Continent. Early in this century [nineteenth] twenty-five francs would buy more, and especially more of the things needed by the working classes, in France than £1 would in England. But now the advantage is the other way: and this causes the recent growth of the wealth of France to appear to be greater relatively to that of England than it really is.

Many facts seem to corroborate Professor Marshall's opinion. There is undoubtedly less gold in England now than there was twenty-five years ago,[7] and it is estimated that the circulation of gold, silver, and uncovered notes per head of the population is almost as much in Germany and Spain, is considerably more in Belgium and Holland, and more than twice as much in France as it is in England.[8]

Statistics published in 1903 by the Board of Trade in the Blue Book on British and Foreign Trade and Industry [Cd. 1761] tend to prove the same conclusion. By their means we can make a rough estimate of the relative cost of the chief necessities of life in

[6] *Principles of Economics*, i., p. 317.
[7] *Dictionary of Political Economy*, ii., p. 617.
[8] *Ibid.*, p. 605.

England, in America, and on the Continent. Since 1877 the price of food, which represents one-half of the total expenditure of the working classes, has decreased by about thirty per cent. in Great Britain; very much more than it has decreased in France and Germany. Between 1880 and 1897, the cost of workmen's food in Paris fell fourteen points, compared with thirteen in Germany, and forty-two in the United Kingdom.[9] Of the chief articles of food, bread and flour are cheaper in London than in Paris or Berlin; home-produced butcher's meat is slightly dearer, but the balance is redressed by the cheaper price of foreign and colonial meat. Butter and eggs are slightly dearer in London, but sugar and rice are cheaper. Clothing is cheaper, on the whole, in England than on the Continent or in America; house rent in the large towns is somewhat dearer.

It would seem, then, that there is no reason for saying that money has less value in England than on the Continent, or that, on this account, a greater sum is required in England for a mortal sin of theft. The contrary is probably more correct.

Not all countries, however, are equally rich; England and America are the richest nations in the world, and it is conceivable that in comparison with the wealth of the population, what is a notable sum in one country is not so in another. I take it that this would be true if the wealth of England and America were more or less equally divided among the population. This is not by any means the case. Wealth, in great measure at any rate, seems to accumulate in

[9] *Loc. cit.*, p. 226.

comparatively few hands, and the great mass of the people remains little the better off for the greater wealth in the country. The urban population of England is about seventy-seven per cent of the whole, and the recent investigations of Mr. Charles Booth and Mr. Rowntree have shown that some thirty per cent. of these live in a state of poverty, without a sufficiency of the bare necessaries of life. It seems to me that in these circumstances the common estimate of the value of money in England is not likely to be less, but rather more than in other European countries.

It is, indeed, true that wages are higher in England and in America than in France or Germany. According to the rough estimate contained in the Blue Book from which I have already quoted, workmen's wages in the United States are one-and-a-half times higher than in England; in Germany they are two-thirds, and in France three-fourths of those which prevail in the United Kingdom. We may remark, however, in passing, that this does not prove that the cost of labor of the same amount and quality is greater in the States and in England than abroad; it may be, as many competent judges affirm, that English and American labor is more efficient, and so as cheap or cheaper than labor is on the Continent. So that even though the income of the working-classes is greater in England than it is abroad, this will not cause them to put a less value on money if it costs them correspondingly greater effort. Still the higher wages and cheaper food and clothing enable the working classes in England to spend more and live in greater style, than on

the Continent, and this may somewhat lower the common estimate of the value of money. But, even if we allow something for this, it seems to me that Father Lehmkuhl's estimate of the difference is much too large, amounting, as it does, to fifty per cent.

The general level of wages, not only in England and America, but on the Continent also, is very much higher now than it was sixty or seventy years ago. In 1883, Sir Robert Giffen calculated that in England at that time wages were much more than one hundred per cent. higher than they had been fifty years before.[10] Engel estimated that workmen's incomes had nearly doubled in Belgium between the years 1853 and 1891.[11] This general rise in wages will have some influence on the estimate to be formed of the quantity required for a grave sin of theft. For the working classes form the great bulk of the population, and their estimate of the value of money will greatly influence the general estimate. It seems clear that a workman who gets thirty shillings a week will put less value on ten shillings than if his weekly wage were only twenty shillings. We must, then, allow not only for the depreciation of money, but also for the higher wages, the higher standard of comfort, and in consequence, the relatively less value attached to money by the working-classes throughout the civilized world, independently of its purchasing power.

All things considered, I see no reason for increasing the quantity which the greater number of modern theologians assign as the absolute sum required for a

[10] *Dictionary of Political Economy*, ii., p. 617.
[11] *Ibid.*, iii., p. 679.

mortal sin of theft. That quantity is about twenty shillings, and if we attach much importance, as we should do, to the opinions of such classical moralists of the past as Lugo about such a question, the sum will be rather below than above twenty shillings.

With twenty shillings I can purchase a week's work of an average workman, who will be able to support himself and his family on it. Such a sum is a notable quantity of money; it is a very respectable subscription even for a rich man to a charity, or any other object that attracts public support. Subscriptions to learned societies are, commonly enough, one pound or one guinea a year. If such a sum could be stolen without grave sin, its amount would prove too great a temptation for the virtue of large numbers of people, who wish to save their souls, but make little of venial sins; who shrink from crime, but, to put the matter in homely language, do not profess to be better than their neighbors. For all these reasons, then, it seems to me that to assign twenty shillings as the absolute sum required for a grave sin of theft, is as near the truth as we can get in so intricate a question.

VII

THE THEOLOGY OF STOLEN GOODS

A THIEF who has stolen what belongs to another must, of course, restore the stolen property to its owner. But suppose that he does not do this, and the stolen property finds its way into the hands of others, who, perhaps, know nothing of the theft, what will be the duty of such possessors of another's property when they come to know the facts of the case? The older theologians discussed this question from the point of view of natural and Roman civil law. Their solutions of the various difficulties to which the question gives rise according to the variety of circumstances were not uniform, and so we may conclude that the dictates of the natural law on the point are not self-evident or clear. Nowadays the question is complicated by the differences in the civil laws of different states and nations. The editors of the new edition of the *Moral Theology of St. Alphonsus,* recognized this. St. Alphonsus, following Busembaum, says: "Si bona fide rem [furatam] ipse emisti et vendidisti sine lucro, nihil teneris restituere, sed solus is apud quem res est." [1] To this the editors append the following note: —

[1] III., n. 609.

Ex jure Gallico, Italico, Austriaco, Hispano, qui rem in foro publico, vel de mercatore talia vendente mercatus est, is non tenetur eam domino reddere, nisi refuso sibi pretio, quod rei dominus dein vicissim a venditore repetere potest. Ex jure Anglico, si res empta fuerit in nundinis (*market overt*), excepto casu evictionis per judicis sententiam, dominium pariter transfertur in emptorem bonae fidei. Et cum hoc ad commercii securitatem statutum sit, res potest retineri tuta conscientia. Ex jure Germanico, qui rem alienam a persona non suspecta acquisivit, potest eam retinere, donec constet eam esse furatam vel amissam.

The learned editors recognize, then, that the positive law of the country in such matters is also the rule to be followed in conscience. In his discussion of these questions, Father Lehmkuhl keeps in view the prescriptions of natural law for the most part, which he says, "Sunt ibi servandae ubi leges positivae aliud non constituerunt."

Unless it is evident that the positive civil law on such matters is unjust it is certainly a duty in conscience to observe it. It determines rights of property in doubtful cases which is certainly within its competence, and as it is practically the only rule available, it must be followed if contention, strife, and disturbance of the peace are to be avoided. It is, then, a matter of importance for the student of moral theology to know the rules laid down by English law concerning the ownership of stolen goods when they have passed out of the hands of the thief. I propose in this paper to indicate its chief provisions, and to point out any peculiarities in which it differs from other systems of law which writers on moral theology have had in mind when they composed their treatises

on justice. In my treatment of the question I shall principally follow the guidance of Mr. C. L. Attenborough who, in 1906, published a little volume on the *Recovery of Stolen Goods.*

The thief has no title to the property stolen by him, and he cannot acquire one by lapse of time. The longer he keeps what does not belong to him the greater injury he does the true owner. Moreover, the general rule is that the thief cannot give a valid title to property which he has stolen to anybody else. *Nemo dat quod non habet* — nobody can give to another what he does not himself own. This rule of common sense and natural justice is confirmed by English law. The Sale of Goods Act, 1893, sec. 21 (1), enacts that: —

> Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

The owner will be precluded from denying the seller's authority to sell by his conduct when he has held out the seller as the owner of the property, or has consented to his holding himself out as the owner, or as having the right to dispose of the property. In these cases, whether the seller act dishonestly or not, a buyer ignorant of the true facts who relies on the representation made will acquire a valid title to the goods by English law. Besides the foregoing there

are certain other exceptions to the rule that the buyer acquires no better title to the goods than the seller had.

And first with regard to money that has been stolen, and which, for the purposes of moral theology, we may treat as goods. When stolen money has been paid away fairly and honestly as currency for a *bona fide* and valuable consideration the dominion of it passes to the payee, and the former owner cannot recover it. This is due partly to the nature of money as a medium of exchange and partly to the effect of positive law. It is to be noted that the privilege does not attach to coin not used as currency. Thus in a recent case where a thief had stolen a £5 piece, and afterwards exchanged it for five sovereigns, it was held that the person from whom the thief had stolen the £5 piece could recover it, as it had not been paid away in currency. As long as the money remains with the thief or his agent it may be recovered by its owner, and the same is true of stolen money given to another gratuitously by the thief.

What has just been said of money applies also to negotiable instruments which pass by mere delivery. Under the term " negotiable instruments " in this connection are comprised bills of exchange, promissory notes, bank notes, cheques to bearer, exchequer bills in blank, foreign bonds with coupons payable to bearer, scrip of foreign loan, Egyptian bonds, debentures of an English company, foreign railway bonds or debentures payable to bearer, and in general any instrument which by the custom of trade is trans-

ferable in this country like cash by delivery, and is also capable of being sued upon by the person holding it for the time being.

Another exception to the general rule that the buyer acquires no better title than the seller had is furnished by sale in market overt. According to the Sale of Goods Act, 1893, sec. 22 (1): "Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller." Market overt is any open, public, and legally constituted market or fair, and any shop in London is a market overt for the sale of goods in which the shopkeeper deals. The sale must be in good faith as far as the buyer is concerned, for a valuable consideration, and the contract must be made wholly in the market, and not elsewhere. There are special provisions made for the sale of horses to be observed if it is intended that the purchaser should benefit by market overt.

If all the conditions required by law are fulfilled, sale in market overt transfers the property to the buyer even if the seller had stolen the goods. Just as for the common good property passes by prescription according to law, so it passes by sale in market overt according to law.

However, the title of goods bought in market overt is not indefeasible. By sec. 24 (1) of the Sale of Goods Act, 1893: "Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who

was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise." So that upon conviction of the offender for larceny the owner of the goods may request that an order for restoring them be made out in his favor by the court which sentenced the felon. This is expressly granted by the Larceny Act, sec. 100: —

If any person guilty of any such felony or misdemeanor as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, or valuable security, or other property whatsoever, shall be indicted for such offense, by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid the Court before whom any person shall be tried for any such felony or misdemeanor shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided that if it shall appear before any award or order made that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bona fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, in such case the Court shall not award or order the restitution of such security; provided also that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, mer-

chant, attorney, factor, broker, or other agent entrusted with the possession of goods or documents of title to goods for any misdemeanor against this Act.

It is to be remarked that the Sale of Goods Act does not require the conviction to be obtained through prosecution by the owner of the property in order that this may revest in him, and it has been specially provided that when conviction has been obtained by the public prosecutor, restitution of stolen property shall be made to the owner provided that he has given the Director of Public Prosecutions all reasonable information and assistance.

It will be noticed that by the Larceny Act restitution may be ordered after conviction not only for the felony of larceny, but for the misdemeanor of obtaining property by false pretenses with intent to defraud. The distinction is of importance in English law. Larceny has been defined as the felonious taking the property of another without his consent and against his will, with intent to convert it to the use of the taker. To constitute larceny the taking of another's property must be *invito domino*. On the other hand, when the property of another is obtained by false pretenses, the owner consents to part with the ownership, but he is induced thereto by the fraud of the other party. This constitutes the misdemeanor, and in either case after conviction of the offender the owner who had been robbed or cheated could obtain an order for restitution under the Larceny Act. In this respect, however, the Larceny Act was corrected by the Sale of Goods Act, 1893, sec. 24 (2) : —

Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

With reference, then, to the restitution of stolen goods an order for restitution can be made after conviction for larceny, but not after conviction for a misdemeanor not amounting to larceny. Such an order of restitution, however, which the court is empowered under these circumstances to grant after conviction is only one way of recovering one's property. If the property was obtained by a fraudulent contract the previous owner may by word of mouth or in writing rescind the contract, and then he recovers his title to the goods. The owner may seize his property wherever he finds it, and in case he was unlawfully deprived of it, he may use such force as is necessary for the purpose of recapture, though he may not always enter upon another's premises in order to take what belongs to him.

The owner may also recover his property together with damages for any injury that he has suffered from its loss by bringing a civil action against the fraudulent person who deprived him of it, or against an innocent purchaser, or against a thief who has robbed him after he has performed his public duty of prosecuting the thief. Sale of stolen goods by private contract does not pass the property in them, and much less does gift, so that through how many hands soever they may have passed in either of these ways they

always remain the property of the owner from whom they were stolen, and they must be restored to him when the facts become known. Innocent purchasers of stolen goods who have surrendered them to their true owner may recover damages from those who sold to them whether the sellers knew of the defect in their title to sell or not. This is expressly provided for by the Sale of Goods Act, sec. 12: —

> In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—
> (1) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass:
> (2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods.

The breach of a warranty gives a right to an action for damages, while failure in a condition vitiates the contract. Theologians discuss the question whether an innocent purchaser of stolen property, who afterwards becomes aware of the fact that the goods were stolen, may restore them to the thief in order to recover his purchase money. Whatever some theologians may say in defense of such a proceeding, it could not be adopted among us without exposing the purchaser who had recourse to it to the danger of a criminal prosecution for misprision of felony or compounding a felony. An innocent purchaser who has suffered loss by having to restore stolen goods to their rightful owner may obtain compensation from the

Court. By 30 and 31 Vict., c. 35, s. 9, it is provided that: —

Where any prisoner shall be convicted, either summarily or otherwise, of larceny or other offense, which includes the stealing of any property, and it shall appear to the Court by the evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, it shall be lawful for the Court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order that out of such moneys a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser.

Moreover, by 33 and 34 Vict., c. 23, s. 4, it is lawful for any court by which judgment shall be pronounced or recorded,

if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for felony, to award any sum of money, not exceeding £100, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the amount may be ordered by the Court to be paid out of any moneys taken from the prisoner on his apprehension, or payment may be enforced in the same manner as payment of any costs ordered to be paid in any civil action.[2]

The Roman law, like most modern systems, granted a title by prescription for movables as well as immovables. Accordingly, theologians teach that one

[2] Attenborough, p. 184.

who has possessed another's property in good faith for the time required to gain a title of prescription, thereupon becomes its owner, and is no longer bound to restore it to the original owner. In English law movables cannot be claimed by prescription, and so ownership in another's goods that have been stolen cannot be acquired by prescription among us, unless the goods belong to the Church, and are thus subject to ecclesiastical law. By ecclesiastical law uninterrupted possession in good faith for thirty years gives a title to movables that have been stolen, and so one who in good faith bought a stolen chalice and kept it for thirty years would become its owner by prescription after that length of time.

Greater difficulties than the foregoing arise when we consider the obligations of one who was in possession of another's property in good faith, but who has parted with it to some third person. For the solution of this question various hypotheses may be made.

One who formerly was in possession of another's property may have given it to a third person. In that case he must warn the donee that he has discovered that the gift belonged to some one else, and that he had no right to make it over to him; if he does not do this he will sin against justice, inasmuch as he is bound in justice, as far as possible, to prevent loss accruing to his neighbor through any action of his. Moreover, if he obtained any natural fruits from the property while it was in his possession, he must account for them to the owner, for *Res fructificat domino*. Any fruits obtained by his own industry

on occasion of being in possession of another's property he may keep, they are the *fructus industriae*. If there are no actual fruits of the property in his hands, or if the property no longer exists, or the possessor cannot be found, the former possessor in good faith will be under no obligations with respect to it or its owner.

A purchaser in good faith and in market overt of another's property who has sold it again in market overt will have no further obligations towards the original owner or towards the buyer. He had made the property his own, and he sold it as his own. We have seen that if the sale was not in market overt, the sale does not pass the property in the goods, and that the seller is liable to be compelled to refund the purchase money to the buyer who has restored the goods to their owner. Is such a seller also liable to the owner of the property?

We have seen that by the Larceny Act, the Court may, after conviction of the offender, order the restitution of any property that has been stolen or fraudulently acquired. In section 1 of the same Act, "property" is interpreted as including —

> Every description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and as also including not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

At first sight it would seem from this that any one who has sold stolen property may be called upon to account for the proceeds to the owner. It has, however, been held that this interpretation does not apply to proceeds of stolen goods in the hands of innocent purchasers or pledgees, who hold such proceeds for themselves and not as agents to the thief, nor has the court power to order the restitution of such proceeds. Such a purchaser, therefore, will only be bound to refund the purchase money to one who bought stolen goods from him when they have been restored to their owner.

A seller, however, who acquired stolen property by gift, will come under the provisions of section 1 of the Larceny Act, and he may be compelled to account for the proceeds of the sale to the owner of the goods. An innocent holder of stolen goods, says Mr. Attenborough,

> will either hold them as an agent of the thief, or as a donee from him, or as a purchaser, in which expression we include a pledgee. With regard to the thief's agent or donee it need only be said that he is in no better position than the thief himself, and that the goods can be recovered from him as readily and in the same way as they can be recovered from the person who stole them.[3]

And again: —

> Where property has been obtained by fraud and still remains in the hands of the fraudulent person or of his agent, it can be recovered from him as readily as if it had been stolen; and the same applies if the property is in the hands of a donee from the fraudulent person, or of one

[3] Attenborough, p. 16.

who has given value for the goods but with knowledge or, what is equivalent, an unsatisfied suspicion that some fraud has been committed with regard to them by the person from whom he received them.[4]

In this way then it would seem that English law settles in favor of the owner a question which is a matter of considerable controversy among theologians. The common opinion, indeed, of theologians is on the same side as English law, it obliges the donee of stolen goods to restore the proceeds of their sale to the owner when he cannot come at the goods themselves, but some doubt whether this is so certain as to impose a strict obligation in conscience. It is to be noted that the obligation under English law does not arise until the order for restitution has been made out and put in execution. Until this step is taken, it may be said in favor of the more lenient opinion that when goods have been sold for money in good faith, the money as currency becomes the property of the seller, and especially when it is added to and mixed with one's previous stock. It then becomes the seller's property by accession,

for the product of, or substitute for, the original thing still follows the nature of the thing itself as long as it can be ascertained to be such, and the right only ceases when the means of ascertainment fail, which is the case when the subject is turned into money, and mixed and confounded in a general mass of the same description.[5]

[4] *Ibid.*, p. 47.

[5] Attenborough, p. 89.

VIII

SECRET COMMISSIONS IN TRADE

It is well known what a keen interest the high-minded and public-spirited Lord Russell of Killowen took in the question of secret commissions in trade. His wide experience at the Bar and on the Bench in England had convinced him, as he publicly acknowledged when summing up as Judge in the case of Oetzman vs. Long [1896], that "this business of corrupt bargains was a malignant canker; it was affecting honesty in all or in many details of the relations of life, and was not confined to commercial relations." He spent much time and thought on the question in the last years of his life, and in conjunction with Sir E. Fry he drafted a Bill of which the object was to make criminal all corrupt practices by or with an agent in the exercise of his agency. As Lord Chief Justice of England he introduced his Bill into the House of Lords in 1899 and again in 1900, but he never had the satisfaction of seeing it become law. He concluded the speech by which he introduced the measure in 1899 with the following weighty words:

I feel strongly on this question, and have been led to detain the House at some length with the hope that your Lordships will share the strong interest I feel. As a ques-

tion of money, and as affecting trade, it is important; but that is not the only view presented to my mind. It is a practice that tarnishes the character of lawful commerce; it blunts the sense of honesty in the man engaged in it; it is injurious to the honest man trying to conduct his business on high and honorable principles, and has a corrupting and degrading influence in ways that I need not formulate or define. I commend the Bill as an honest attempt to deal with what I conceive to be a great and growing evil.[1]

Sir E. Fry explains the words of Ecclesiasticus 27 : 2, concerning " the sin that sticks fast in the midst of selling and buying " as a reference to secret commissions.[2]

The Judge's exegesis may be somewhat too narrow, but in all probability secret commissions were given and taken in trading communities long before the days of the Preacher.

The London [England] Chamber of Commerce appointed a special Committee to inquire into the matter, and in 1898 this Committee issued a Report which contains a great deal of valuable information of which I have made large use in my paper.

Under No. 5 the Report says: " Your Committee conclude from the evidence before them that secret commissions in various forms are prevalent in almost all trades and professions to a great extent, and that in some trades the practice has increased and is increasing, and they are of opinion that the practice is producing great evil, alike to the morals of the

[1] R. B. O'Brien's *Life of Lord Russell of Killowen*, p. 301.

[2] *The sin that sticks between buying and selling*, by the Right Honorable Sir E. Fry, p. 1.

commercial community and to the profits of honest traders."

The Committee expresses its opinion that much good might be done by written papers, or oral addresses, or by public meetings directing attention to the "heinousness of the system of secret commissions and its detrimental effect upon morals and business," p. 6.

Evidently it is a question which concerns the moralist and the priest, as well as the lawyer and the merchant, and no apology is needed for treating the subject in the pages of the *Ecclesiastical Review*. My instances will be taken from English sources, but I have no doubt that they could be paralleled from across the water.

The fundamental principle which should be kept in mind throughout this discussion is that an agent of whatever kind is bound by the nature of his agreement to act for his principal and not for himself. He is engaged by his principal to buy or sell or do something for him, and he receives compensation from the principal for what he does. He is bound to use ordinary care and diligence in the matter entrusted to him, or at any rate such care and diligence as the circumstances and the nature of the work to be done require. In consideration for this he receives, as we suppose, a reasonable and just salary. Besides his salary he cannot claim any additional payment for what he does.

However, as we have seen, it is a very common practice for agents of all kinds to receive something over and above the salary or wages which their prin-

cipal pays them. Indeed some railway porters, hotel waiters, and others, are said not to be paid at all by their employers, but to gain their living from the tips given them by customers. Cases are mentioned where such employees actually pay their employers for their posts. There can be no moral difficulty about such arrangements, unless they involve hardship or extortion, which need not necessarily be present. The tips are freely given, as is here supposed, and they are reckoned on by employers and employed alike. Such practices may be objectionable, but in themselves they are not morally wrong.

Somewhat different from these are cases in which the giving and taking of commissions are not equally reckoned on by the parties concerned. As an example I will take the case of the *Great Western Insurance Company vs. Cunliffe* [1874] from the Report of the London Chamber of Commerce, p. 17. In this case the plaintiffs, a marine insurance company in New York, appointed the defendants their agents for settling claims and effecting re-insurances. There was a fixed percentage payable for settling claims, but no remuneration for re-insuring. The agents were allowed by the underwriters, in accordance with custom, 5 per cent. on each re-insurance, and on the general balance of the year's accounts 12 per cent. on the year's profits, if there were any. The agents, in their accounts sent to the company, mentioned the 5 per cent. commission, but not the 12 per cent. on the year's profits. When the company became aware of this they claimed an account of sums received in respect of such 12 per cent. commission. The action

was successful in the first instance, but was defeated on appeal. In the Court of Appeal, Lord Justice James said:

Whether you call him a broker or not, the person who is the agent for the merchant or anybody else, by a well-established practice obtains the insurances, and receives a discount of 5 per cent. which he puts into his own pocket. He is paid by the underwriter, instead of by the principal. And then, by a practice quite as well known, recognized by everybody connected with the business, recognized by the Courts of Law of this country, referred to over and over again, there is another thing—there is a gratuity which the broker receives upon the settlement of the accounts, being 12 per cent. upon the balance, if the balance should happen to be a favorable one; that is, if the underwriter finds it to be a profitable account, he gives 12 per cent. upon it to the broker who brought the business to him. The plaintiffs have never disputed that the defendants were entitled to retain in their pockets the 5 per cent. They say, "We knew that, but we did not know of the other." But they never inquired.

In such a case as this of course conscience follows the law; a well-recognized and legitimate custom is the agent's title to keep the commission. Sometimes indeed there is a difficulty in such cases about the existence of a recognized and legitimate custom. This is illustrated by the case of *Hippesley vs. Knee Brothers,* an appeal case decided in the High Court of Justice on October 27, 1904. The appeal was from the decision of the County Court Judge sitting at Bristol. The following is the report of the case from the *Times,* October 28, 1904: —

It appeared that the plaintiff, Mr. Hippesley, a solicitor practising at Bristol, was desirous of selling a portion of

his collection of bric-a-brac and also certain pictures which he had bought from Messrs. Frost and Reed, but which, not having been paid for, were still in the possession of that firm. With that object in view the plaintiff interviewed the manager of the defendants' firm, who carry on the business of auctioneers, and as a result of negotiations between the parties it was agreed that the defendant firm should sell the plaintiff's goods on the terms set out in two documents dated July 25, 1903. The terms of the defendants' employment, so far as they are material to this case, were as follows: In order to enable the plaintiff to obtain possession of the pictures purchased from Messrs. Frost and Reed the defendants were to advance to the plaintiff a sum of £200, which sum, with interest at 5 per cent., was to be charged on the goods entrusted to them. The defendants were to sell the goods by auction, and were to be paid commission of 5 per cent. on all lots sold, the *minimum* commission to be £20. The defendants were also to be paid all out-of-pocket expenses in addition, which included "advertisements, printing and posting bills, printing catalogues, posters, time, and postages." The defendants instructed a firm of printers to print the posters and catalogues. The printers did the work, and in their ledger debited the account of the defendants with the sum of £13 9s., being the price which they would have charged to any ordinary customer, but, on payment, they allowed to the defendants, because they were auctioneers, the trade discount of 10 per cent., which they would not allow to any ordinary customers. The defendants in the account sent to the plaintiff charged him with the full amount of £13 9s., and did not make any rebate in respect of the trade discount allowed to them. In the same manner the defendants received a discount of £1 8s. 7d. on the newspaper advertising account, but charged the plaintiff with the full amount of the account. The sale of the plaintiff's goods took place in September, 1903. The plaintiff, being dissatisfied with

the result of the sale, brought this action in the County Court, claiming from the defendants £1 6s. 8d., the discount the defendants had received from the printers, on the ground that that sum was a secret commission which had been received by the defendants whilst acting as agents for the plaintiff, and £1 8s. 7d., the discount received by the defendants on the advertising account, on the ground that the defendants had expressly agreed with the plaintiff to allow him that rebate on the account. He further claimed that, inasmuch as the defendants, whilst acting as agents for him, had received a secret commission, he was entitled to the return of the £20 commission paid by him to the defendants. The defendants called evidence to prove, and did prove to the satisfaction of the learned Judge, that there was a long-established usage or practice amongst auctioneers to act as the defendants had acted with regard to the discounts on the accounts, and that it was the usual practice for the printers to deal with the auctioneers as principals, and to allow them as trade customers the trade discount off the retail price, the whole of the retail price being charged by the auctioneers against the vendors. It was admitted that no mention of the discount was made by the defendants to the plaintiff: and the plaintiff swore that he did not know of any usage or practice under which the defendants might claim such discount, though he admitted that he knew there was such a practice with regard to the bills sent in by newspapers for advertising. The County Court Judge was of the opinion that the defendants had acted honestly, and that, inasmuch as they took no secret commission from any person with whom they were negotiating a contract to be made between that person and the plaintiff, and inasmuch as the plaintiff was not in fact damnified, the plaintiff's claim failed, and that he was not entitled to recover from the defendants the amount of the trade discount allowed to the defendants, nor the amount of the commis-

sion earned by the defendants on the sale of the plaintiff's goods.

The Court of Appeal set aside the decision of the County Court Judge, and after delivering judgment the Lord Chief Justice said:

He must say that he thought that the law which had been applied in the cases referred to should be applied in all cases where an agent employed to do certain work received a secret commission in relation to the performance of his duty to his employer from any one other than his employer. He only wished to add that he thought it was highly probable that there did prevail, unfortunately, in commercial circles in which perfectly honorable men played a perfectly honorable part, a most extraordinary laxity in the view which was placed on these proceedings. If a principal employed an agent for a given remuneration to do work for him, and employed him upon those terms, that agent was not allowed to make secret profit for himself out of that transaction. The sooner that was recognized, and the sooner that these secret commissions were made to be disapproved of by men in an honorable profession, the better it would be for trade and commerce in all its branches. He said that not because for one moment he thought that these gentlemen were acting otherwise than in what they believed to be in accordance with their rights, but the argument of Mr. Duke had led the Court—indeed, it had invited them—to say that the Court should allow those commissions to these gentlemen as against their principal because the principal knew, or ought to have known, that something of the kind was going on. Of course, if it was brought to the knowledge of the principal that such things were being paid, it ceased to be secret, and then, of course, the question did not arise; but when there was no knowledge, the agent ought to account, and it was only honest that he should carry on

his business on the principle that he should account. The two authorities Mr. Duke cited were authorities in which it was perfectly obvious that the employer knew that the agent was being remunerated by third parties: therefore they in no way affected the principle which he had endeavored to lay down. For the reasons which he had stated the appellant was entitled to judgment for the two sums which the respondents had received by way of discount, but was not entitled to recover the commission which he had paid to them.

In this case, I think law is somewhat stricter than conscience need be. The principal had his work done for him by the agent according to the contract, and on the usual trade terms; the commission was not intended for the principal, but was allowed to the auctioneer as such, by what seems to be a particular or local custom, much in the same way as booksellers deal with each other on more favorable terms than they grant to the outside public. There is no hint that the interests of the principal suffered in consequence of the agent receiving the commission from those whom he employed. In such circumstances there seems no reason why, as a matter of conscience and before the sentence of a competent authority, the commission received by the agent should be handed over to the principal. In conscience such a transaction may be looked upon as similar to the Christmas boxes which are given to postmen, or the little presents which are made to servants and others by tradesmen with whom they habitually deal. Unless debarred by special agreement or command, the agent will be safe in conscience if he retain such presents.

The line between these and a large class of more or

less objectionable practices is not easy to draw. The difficulty is touched upon by the Report of a strong committee of business men appointed to consider the question on behalf of the Rochester [England] Diocesan Conference of the Church of England, 1903:

> The Committee is convinced [we read in the Report, p. 2] that what modern times and modern ways most require, in order to make the nation clean and true, is faithfulness in Christian people to Christian duty and to Christian ideals. At the same time it is not infrequently difficult to discover which *is* the path of duty. The Committee had before them two clergymen of experience with the view of obtaining in confidence an account of their methods of dealing with cases of conscience in matters of Commercial Morality. The answers to a series of questions which the Committee put, showed a considerable difference of opinion; and it was abundantly manifest that there is a need for some guidance in the application of moral principles to individual cases of difficulty.

As a type of the cases which I am here considering I select the following from the Report of the London Chamber of Commerce, p. 10:

> A representative of a lubricating oil firm sent a copy of a letter which he had received from an engine driver: "Sir, having used your cylinder oil for going on eight years, I now take the liberty of asking you if you cannot allow me and my mate something for using the same. A gentleman came to our mill and asked me whose cylinder oil we were using, and how much a cask you were allowing me. I told him we were using your oil. He asked me if I would give their oil a trial and he would allow me a good discount. I said it was no use of him bothering as we were quite satisfied with what we were using at the

present time. Hoping you will oblige us by return of post. I remain, etc."

If the oil of the rival firm in this case was equally cheap and equally good, so that the employer would suffer no damage by its use, there would seem to be no injustice done if the driver gave it a trial in consideration of the discount promised him. The rival firm must be supposed to be ready to share part of their profits with those who use their oil, and this they have a right to do. No injustice is done by leaving the firm with which business has been done for eight years, though naturally such conduct is resented by tradesmen. It cannot be denied, however, that there is danger in such practices. If the engine driver receives a commission on the oil he uses, he is exposed to great temptation to waste it, so as to increase his earnings; if he finds that in course of time an inferior article is supplied, or if the invoice shows a greater quantity than he actually took, he is hardly in a position to defend the interests of his employer. In the great majority of cases he would hold his tongue, pocket his discount, and fail in his duty to his master. On this ground Sir E. Fry absolutely condemns such transactions.

Another, and less genuine line of defense, [he says] [3] is the assertion that the gift is not made with any intention to bias the recipient, or that the recipient is not biased by it, and does his duty to his master in spite of it. This ignores the real point of the matter. To say whether a bribe has or has not operated on the mind of the recipient is a metaphysical inquiry which it is difficult for

[3] *The sin that sticks*, p. 7.

the man himself, and often impossible for others, to answer; to say what is the tendency of a bribe is a matter of no difficulty; and in all transactions of this sort, often obscured and embarrassed by the complications of modern commercial life, the true inquiry is, has the payment (made under whatever name it may be, of gratuity, of Christmas box, of discount, of percentage, of capitation fee), has it a tendency to blind the eyes of the receiver, to make him less vigilant for his master than he ought to be—to look with more favor on the giver than on others who are not givers of like gifts? If this tendency be found to exist, the transaction is to be condemned—however innocent may have been the intentions of the donor, however untainted may have remained the mind of the recipient.

This is indeed the legal attitude toward such transactions, especially if a positive law already exists which forbids them on account of the presumption of fraud. But the moralist must not confound things so different as the tendency to produce evil and evil itself, especially as the strength of the tendency may vary almost indefinitely according to character and other circumstances. However, if this be allowed for, the moralist's attitude toward such transactions will not differ widely from the lawyer's, for he will recognize them as full of danger, and to be avoided by all who wish to escape the snares of sin. The confessor then will dissuade his penitents from such transactions in the future, but, unless it is clear that injustice has been done by them in the past, he will abstain from imposing any obligation to make restitution to the employer.

The agent must not buy or sell for himself what he has been engaged to buy or sell for his principal, with-

out that principal's knowledge and consent. Law and conscience are here almost at one. The doctrine may be illustrated from the Report of the London Chamber of Commerce, p. 13.

The leading case which illustrates the rule forbidding an agent for sale to purchase for himself, or an agent for purchase to sell his own property to his principal without full disclosure, is *Brookman vs. Rothschild* [1829]. There the plaintiff employed the defendant to buy and sell foreign securities, and directed him to sell 20,000 French Rentes. The defendant, without the plaintiff's knowledge, purchased these for himself and his partners, but gave the plaintiff the market price. The defendant then pretended to purchase Prussian bonds for the plaintiff, but in fact the purchase was of the defendant's own bonds, remaining in the hands of the defendant and his partners, the plaintiff being debited with the market price and commission. Other similar transactions took place between the parties, and finally accounts were balanced, and the plaintiff paid the balance which appeared to be due from him. Four years afterwards the plaintiff, having discovered the nature of the transactions, applied to the court to have them set aside and his money returned, and was successful.

As a general rule, at any rate, conscience should here follow law. Exceptions might be permitted where extraordinary diligence has been used by the agent to sell or buy in a better market; but even here, on account of the danger, and because the agent's judgment can hardly be unbiased when his own advantage is in question, and he is not usually prepared to take both sides of the risk, the practice should be condemned.

There are many cases where the only course open to an honest man is, at whatever cost, to take his stand

on the eternal and immutable principles of justice. In spite of the commercial corruption of our time, in such cases honesty is still the best policy. Certainly this must be the maxim to be followed in cases like that mentioned by Lord Russell in the speech by which he introduced his Bill dealing with secret commissions into the House of Lords on April 20, 1899. Lord Russell said: —

One of the most painful experiences which I have had professionally was at the Leeds Assizes, where I had to defend an old man who had been in business for something like fifty years. He was a member of the local Corporation. His son was succeeding him in business. He was charged at the Assize Court with having entered into a conspiracy with Lord Masham's foreman dyer to defraud Lord Masham, who is the head of a silk manufactory in Bradford, by invoicing goods which were never delivered, by invoicing inferior goods and charging the price of higher-class goods, and, occasionally, when they sent the best goods, by charging an excessive price for them. When I saw my client and his solicitor, I said, "If the evidence as on the depositions comes out, the case is hopeless. How could a man holding a respectable position, and so long before the public, be a party to such transactions?" His explanation was a very pathetic one. He said he could not help it; that he was driven to it. It began first with small commissions, but gradually the screw was turned on, and his trade profit would have disappeared altogether if he had not fallen in with the arrangement. I asked him if he could not have gone to Lord Masham and told him. He said he could, but the result would have been that the foreman would have been dismissed, and another man put in his place; and if he had not made an arrangement with the new foreman, that man, when a vat containing perhaps £220 or £300 worth

of stuff was in the process of dyeing, would have put some noxious stuff into the vat, and would have said to Lord Masham, "See the kind of drugs you are using. You will have to change your drug merchant." I do not believe that is at all an isolated case.[4]

The hardship endured or at any rate feared by the conscientious agent in such cases might often be mitigated or removed if only the principal would condescend to take a little trouble in his own interests and for the sake of justice. In proof of this an example taken from the Rev. J. Carter's *Commercial Morality* may serve as a conclusion to this paper: —

A short time ago, a friend of mine, a veterinary surgeon, was requested by a coachman to put down half a dozen more horse-balls to his master; but he did not want any sent in, adding, "Don't forget it is near Christmas!" The inference was clear. The balls were to be charged, and the money given to him. My friend consulted me about it, saying, "If I do not do it that beggar will get me out there somehow, either by complaining of the way I treat the horses or by some other cause!" I replied, "It is your business to go to his master and report the matter to him." Now, this veterinary was a young man who had just purchased a practice in our town, and had fairly high ideals of justice and truth; but he was a Scotchman, and before all things he meant to get on. He took my advice, went to the gentleman, and told him. The gentleman was much annoyed at being bothered over such a matter. The coachman still holds his place, and my friend has ever since had the greatest difficulty in keeping the gentleman's custom. Now, when he hears me talking about what I think is right, he sits smiling, and concludes by saying, "Yes, you're right, but it doesn't pay."[5]

[4] R. B. O'Brien's *Life of Lord Russell of Killowen*, p. 300.
[5] Page 25.

IX

DEALS IN OPTIONS AND FUTURES

If a corn-merchant buys 100 quarters of wheat from a farmer who has just harvested them, he concludes with him a contract of sale "on the spot," the farmer undertakes to deliver the corn and the merchant undertakes to pay the price agreed upon. The corn-merchant may wish to make sure of being able to obtain for his customers a constant supply of corn for the future, and so he approaches the farmer some months before harvest time, and enters into a bargain with him by which the latter binds himself to sell the merchant 100 quarters of wheat before the end of next September; the parties then conclude a future contract. More specifically one is said to deal in "futures" when the goods contracted for are not at the time of making the contract in the possession or ownership of the seller. And should the terms of the contract leave the choice to the seller either to deliver the stipulated quantity of wheat at a fixed price, or to pay the difference between the price agreed on and the actual market price when the term of the contract arrives, the contract is an "option."

From such an "option" contract to mere "time bargains," or "difference transactions," or "margins," is but a step. In these transactions real delivery of goods to the buyer is not contemplated by

either party; they merely make use of the market price of wheat, or cotton, or stocks and shares, or bacon, or other commodity, as matter for a wager. The parties to the contract enter into a speculation about the price of the article at a future date. A agrees to buy 100 quarters of wheat from B three months hence at seven dollars the quarter. If at the date in question the price is higher than that agreed upon, the seller pays the difference; if on the other hand it is lower, the buyer pays. Such gambling transactions in wheat, cotton, securities, and various other commodities are far more numerous on the world's Exchanges than are ordinary contracts in which effective delivery of what is bought and sold is contemplated. It is a subject of hot debate in the commercial world whether such gambling has a good or bad effect on genuine trade. There is, of course, a great increase of business for commission houses, brokers, and agents generally, resulting from fictitious bargains, and it is to be expected that such classes will be loud in defense of time bargains, or "options" and "futures," as they are often indifferently and loosely called. On the other hand, producers of foodstuffs and manufacturers of raw material into cotton goods seem generally persuaded that their trade is seriously injured by gambling transactions on 'Change.

Within the last few years several Governments have given serious attention to the question. Thus on July 8, 1897, Mr. Bankhead introduced into Congress a Bill regulating the sale of certain agricultural products, and imposing taxes on "options" and "fu-

tures," and on dealers in them. Another Bill with similar scope was introduced into Congress on December 4, 1899, by Mr. Terry. Bills for preventing and penalizing dealings in cotton "futures" and future contracts in agricultural products have still more recently been submitted to Congress.

Among the nations of the Eastern Hemisphere special laws against gambling in "futures" have been passed within the last few years by Austria, Norway, and Germany. The history of this legislation in Germany is specially interesting. The financiers of Berlin had incurred the enmity of the conservative elements in the German Reichstag. The Agrarians attributed the fall of prices in agricultural products to the dealings in futures on the Berlin Exchanges; the Anti-Semites supported the Agrarians because the leading financiers were Jews; the Centre party gave its support because it feared the moral effects of unbridled speculation. The result was the Exchange law of June, 1896. One clause of this law forbade dealings in options and futures in agricultural produce. The financiers refused to submit to the law and attempted to open a private Exchange, where they might conduct their operations unfettered by any legal restraints. Litigation ensued with varying success, but after a struggle which lasted two years the Government gained the day, and the members of the Exchange submitted. The present state of the question is summed up in a report prepared by Dr. Schwabach, His Britannic Majesty's Consul-General at Berlin, which is printed in a British Parliamentary Paper issued at the beginning of this year on *Leg-*

islative measures respecting gambling in "Option" and "Future" contracts as regards foodstuffs, p. 24.

The Exchange Law of June 22, 1896, prohibiting gambling in options and futures of agricultural produce in Germany remains still in force. Opinions differ widely as to the effects of the prohibition. Produce dealers, Chambers of Commerce, and other organizations of interests solely or chiefly commercial denounce the prohibition as the direct cause of the increased dependence of the German produce markets on foreign, especially American Produce Exchanges in the matter of prices, of the considerable fluctuations of corn prices in German markets, and of the comparatively low prices for German produce. They maintain that these effects of the prohibition do not, however, affect exclusively, or even principally, the produce dealer, but that they constitute a danger to German agriculture itself. They try to persuade their agrarian opponents that the re-establishment of the trade in options and futures would benefit the producer quite as much as the dealer. The Agrarians on their part deny that agricultural interests have suffered from the prohibition, while they express their satisfaction at the loss of business and influence inflicted through the prohibition upon the German Produce Exchanges, more especially the Berlin Produce Exchange, which, in times previous to the Exchange Law, owed its great power to the very large business in options and futures. The advocates of the landed interest expressly devised and carried the prohibition as a means of breaking the powerful influence the Produce Exchange was able to exercise upon the price of agricultural produce to the detriment, they maintain, of the producer. That the prohibition has proved a disadvantage to the producer himself, has been repeatedly and strongly denied by agrarian members of the Imperial Diet. They have, on the contrary, declared themselves completely satisfied with the effect of the prohibition. They main-

tain that since gambling in options and futures had been prohibited, corn prices in Germany were remarkably free from the fluctuations experienced in foreign markets gambling in options and futures, that prices in Germany were much steadier than in such markets, that prices for German corn were by no means lower than in other countries or for foreign produce, and that producers did not experience any difficulty in disposing of their corn. Statistics are freely used on both sides to support these widely divergent views, and it would be hard to say where truth lies.

The commercial interests in and outside the Imperial Diet continually urge the revision of the Exchange Law and the repeal of the gambling prohibition, while their opponents strictly preserve their uncompromising attitude, and as they are in a majority, the Government does not seem to consider an attempt at revision possible or expedient. Neither the deliberations of the Exchange Committee which was convened by the Imperial Chancellor in June, 1901, nor a conference which took place in September, 1901, between the Prussian Minister of Commerce and delegates of the commercial and agricultural interests to consider certain amendments of the Exchange Law, have led to further action on the part of the Government.

It may safely be presumed that while without any doubt the 'cute brethren of the Berlin Exchange know what is for their advantage, the no less well-informed members of the German Diet, who succeeded in passing this law and maintaining it, in spite of powerful and vigorous opposition, know what is for the interest of the agriculturists of the country.

However, besides the political and financial aspects of the question, there is also the moral aspect. Is dealing in futures morally wrong? Let us study this question from the point of view of moral theology.

There is no theological difficulty about a *bona fide* contract for future delivery of goods, even though the seller has not present possession of them. He knows that he can get the goods before the time arrives when he will be bound by his contract to deliver them to the buyer; he hopes to be able to get them at a cheaper rate than he charges. All this is lawful trade; there is nothing in the transaction that need cause him any qualms of conscience. But if there is question of a mere speculative contract in futures, and the intention of the parties is merely to bind themselves to pay differences, one may well hesitate before giving a definite solution of the problem.

Such a contract is merely a wager, as we have seen; it is in itself to all intents and purposes a bet concerning a future and uncertain event, and the question as to whether it is lawful or not depends on the broader question concerning the lawfulness of betting. An action may be lawful in itself, in the abstract, apart from special circumstances, and yet in the concrete, in certain circumstances, it may become wrong. It will be advisable to consider the lawfulness of difference transactions first of all in themselves, and subsequently as they are met with in practice. The question resolves itself, as we have seen, into the broader one of the lawfulness of betting.

Now, it is commonly taught that it is not wrong to make a bet, provided certain conditions are fulfilled. Among those conditions the principal are: —

1. That the money risked belongs to him who bets, and that he has the free disposal of it.

A lawyer must not bet or speculate with the money

of his client; if he does so, he exposes the property of his client to risk, and sins against justice. The money risked in betting must also be at the free and unfettered disposal of him who bets. He must not bet with what is necessary to fulfil his obligations, otherwise he exposes himself to the danger of not being able to meet them. A father of a family must not bet with what is required for the support of his children, else he runs the risk of not being able to fulfil his natural duty of bringing them up in a manner suitable to their condition in life.

2. Betting, to be lawful, must be free from fraud and deceit.

The event on which the wager is ventured must be uncertain to both parties. If the uncertainty exists only on one side, if it is brought about by means of false rumors and news, if by dexterous manipulation one of the parties intends to decide the event in his own favor, the wager is a dishonest contract.

3. Finally, the chances must be fairly equal on both sides. The sharper who abuses the ignorance and simplicity of the countryman, can make no claim to have come by his gains honestly. He is a rogue and a vagabond.

A wager that fulfils the above conditions is not a sinful transaction. But though this may be true, yet, as is well known, a habit of gambling is easily contracted; and when such a habit has once been formed, it is very difficult to shake it off. There may be a certain amount of temporary success; the excitement and fascination which gambling has for many minds; the ease and rapidity with which large sums of money

may sometimes be acquired by this means,— all lend their attraction, and combine to make what in itself, if indulged in occasionally, may be a legitimate form of recreation, a most dangerous temptation, and the sure road to ruin.

If we apply this doctrine to the question before us, we are compelled to admit that a deal in futures in itself is not wrong if it is accompanied by the conditions laid down above, but that it is wrong if any of those conditions is wanting. However, even though the requisite conditions may be present, it is a dangerous pastime, and should be discouraged, like any other form of gambling, in the interests of public and private morality.

But what is to be said of dealing in futures not in itself and in the abstract, but in the concrete, as it is carried on in the Exchanges of the great commercial centers of the world?

As we have partly seen already, many men of experience maintain that difference transactions exert a beneficial effect on trade. It is claimed for them that they equalize prices and steady them, so that they are not exposed to such great and rapid fluctuations as they would be if left to the law of real supply and demand. There must of course be a close relation between actual prices at which a commodity is sold and the fictitious price which formed the basis of the "futures" contract. The parties to such a contract must be presumed to know something about the probabilities of the case; we must suppose that they are acquainted, for example, with the world's consumption of wheat, if they intend to speculate in that com-

modity; they know approximately too the yield of wheat for the year; they are acquainted with the elaborate statistics on the subject, which have been drawn up by economists for past years, and so they have before them the main elements which are required to enable them to form a good estimate of the price of wheat at a given future time in any particular market. That estimated price will have a great effect in fixing the actual price, for selling prices depend not only on actual supply and demand; they are also largely influenced by prospective considerations as to what is likely to be the supply and demand in the future.

Moreover, the market for futures is practically world-wide. The telegraph puts all the great centers of commerce in close communication with each other throughout the Old and the New World, and makes one universal market of Exchange dealers in securities, corn, cotton, and other commodities. The lowest rate at which an article is sold will fix the market price, and so the lowest price at which wheat is sold in any of the markets of the world, will have its effect in lowering the prices elsewhere. Especially will this be the case as buyers and sellers in futures do not contemplate actual delivery, and so they can afford to disregard costs of transport, custom dues, and similar charges. Thus the contention that dealing in futures equalizes and steadies prices seems reasonable; and, furthermore, it is claimed that this contention is borne out by experience.

Again, it is also contended that futures are a useful and ready means of insuring buyers against loss, and

so help trade. A dealer, for example, contracts to supply 100 quarters of wheat to a customer of his on such a day at seven dollars the quarter. If when the date arrives wheat sells at eight dollars the quarter, the dealer loses on his bargain. He desires to insure himself against such loss, and he has the opportunity afforded him by the market in futures. By buying a similar quantity of futures to be delivered on the same date, he will gain on this transaction what he loses on the other by the rise in price.

All this may be true, and if taken together with the fact that futures add enormously to the volume of business transactions, there is abundant explanation of the favor shown to futures by commercial men, and especially by those connected with the Exchanges.

On the other hand, producers and consumers alike seem generally to have made up their minds that gambling in futures has a disastrous effect on trade. Competitors are almost indefinitely multiplied; the area of competition is vastly enlarged; and producers of wheat, for example, in countries where land and labor are dear, where taxes are burdensome and skies unpropitious, find themselves forced to compete with others who live under opposite conditions. Tariffs may remedy the evil to a certain extent as far as effective contracts which contemplate actual delivery are concerned, but they cannot shut out the subtle influences of gambling transactions.

In addition to this, gambling in futures falsifies prices. In a healthy condition of the market, the price of an article will depend on the costs of production and the law of supply and demand. As long as

these factors dominate the situation, producer and consumer can satisfy themselves that they have full value for their goods or for their money. But when natural prices are interfered with from without by speculators who do not contemplate effective delivery of commodities, and who are only interested in differences, effective dealers can have no security that they get full value in their transactions. Prices are falsified and markets are reduced to an unnatural condition.

It is sometimes argued in answer to this that the fictitious demand and supply of the speculators balance one another, and so leave the market of effective supply and demand unaltered. This, however, is notoriously not the case; the frequent "corners" in wheat, cotton, and other commodities, whether they succeed or not to the satisfaction of those to whose operations they are generally due, show at least that the "bears" and the "bulls" are not evenly matched, but that one party has secured a temporary advantage, with the result that great loss and suffering is caused to others. These considerations seem fully to justify the Agrarian party in Germany in their determined opposition to gambling transactions in agricultural produce. In practice those transactions have a deleterious effect on genuine trade, and so they do harm to the prosperity of the country.

There are also some more general considerations which cannot be overlooked by the moralist. Betting, as we have seen, is not in itself unlawful, provided it is accompanied and safeguarded by certain conditions. When, however, it becomes a habit and

degenerates into gambling, our verdict in ordinary cases must be different. The question bears some analogy to that of drink. Provided strong drink be taken at the proper time, and in moderation, with due care to ensure our being able to keep control over our appetite, it will not do the ordinary healthy subject any harm. But if strong drink is indulged in too freely, if it is taken at all times and begins to usurp the place of solid food, harm more or less serious is the consequence. So too with gambling; if it becomes a passion, if the gambler seeks to make it a substitute for honest toil, and strives to make it support him or bring him wealth, serious harm has already been done. The gambler produces nothing; he adds nothing to the wealth of the community; he soon learns to shun honest work; he becomes a parasite who preys on society, and eventually brings ruin on others as well as on himself. So that dealing in differences, even if regarded merely as a form of gambling and speculation, must fall under the censure of the moralist.

But in practice the transaction is not a mere speculation. When large gains or losses depend on future market prices, there is a very great temptation for all whose fortunes are at stake to take means to influence the market in their own favor. Great financiers, who have immense resources at their command, or combinations of smaller moneyed men have means at their disposal by which they can raise or lower the market price of a commodity to suit their own interest. "Rigging the market," as the process is called, has been reduced to a fine art, and by this art dealers in futures strive to influence in their own

favor the future event on which the bet depends. This is against the rules laid down above, whose observance is necessary if betting is to be an honest transaction. It is like backing my horse against yours in a race, and then bribing your jockey to hold back your horse, or to drug him when the race becomes due. It is a dishonest trick and against the fundamental laws of the game. The sober and well-weighed words used by Sir R. Finlay, the Attorney-General of England, in the House of Commons, when commenting on the Whitaker Wright case, deserve to be quoted in this connection. As reported in *The Times* (London), February 3, 1904, he said: —

Whitaker Wright was, as is well known to the House, the managing director of the Globe Company. The Globe Company was a company which carried on a highly speculative business. In the year 1900 it had got into very great difficulties, and Whitaker Wright, on behalf of the company, engaged in an enterprise which was intended to restore its fortunes. That enterprise was this—he endeavored to establish what is called a corner on a very large scale in the shares of a company called the Lake View, a corner in Lake View Consols; and the particular operation that he was engaged upon was this—he entered into contracts for the purchase of Lake View Consols on a very large scale, and at the same time he was taking measures to secure that the very shares which he was buying should be under his control, so that many of the sellers to him would have to go to him when the day for delivery came and give him any terms he chose to ask for in order that they might be in a position to fulfil the purchase. That was the operation. If that operation had succeeded, as it very nearly did succeed, the fortunes of the Globe Company would have been, to a very great extent, retrieved. It failed. The enterprise in itself was, in my

view, contrary to every sound code of commercial morality. I believe that it is an absolutely immoral thing for a man to enter into a transaction of that kind when he is buying and at the same time is taking steps to prevent those from whom he is buying from being able to fulfil their contracts, except by submitting to any terms he may choose to dictate. Further than that, I have no doubt whatever that such an enterprise falls within the range of the criminal law if it is carried out by several persons in combination, at least if any circumstances of misrepresentation attend it.

This deliberate judgment pronounced by one fully cognizant of the nature of such transactions is only that of common sense and common honesty.

But it would be a comparatively small matter if the evil connected with gambling in futures were confined to the parties immediately concerned in the transaction. Unfortunately, too often many good and innocent people, who never dream of speculating on 'Change, suffer loss from the operations conducted there. A rise or fall in the price of wheat means for the operator the winning or the losing of his bet, but for many a farmer a fall in the price means that he is robbed by the "bears" of the fruit of his toil; it may mean the bankruptcy and ruin of many a respectable family. On the other hand, a rise in prices means an additional hardship on the poor, a greater difficulty in many a household in making ends meet, a robbing of many a poor family of the staff of life.

On many grounds therefore the verdict of the moral theologian on the question of the lawfulness of dealing in futures must be that in practice the transaction is immoral and wrong.

X

THE MORAL ASPECT OF COMMERCIAL "STOCKWATERING"

In the number of *The American Ecclesiastical Review* for December, 1907, the Rev. J. A. Ryan complained that the ethics of business did not receive adequate treatment in the current manuals of Moral Theology. Among the questions which he singled out as either receiving no attention at all or not sufficient attention he instanced "stockwatering, and its manifold causes, characteristics, and effects."[1] I propose in this paper to make an attempt to supply the deficiency of the text-books in this particular respect.

It seems to me that the main difficulty in these questions for the moralist is to get a clear idea of the operation in question. If he can do this, his knowledge of the general principles of justice and charity will enable him to decide whether the operation is morally wrong or not. However, the difficulty is a real one, for the ordinary student of moral theology is not a business man, and he cannot be expected to know all the latest devices by which rogues and swindlers strive to attain their ends. By the time that any particular device is sufficiently well known

[1] Page 653.

to be inserted in a text-book of moral theology it will of course so far be useless for the purposes of the swindler, who will abandon it for less obvious and more efficient methods. In spite of this, however, it may be worth while to discuss the morality of stock-watering, for even devices that are hoary with age are often successful still, and the borderland between the operation that may be permitted and what must be forbidden is not always obvious.

To water stock then is, as the *Century Dictionary* tells us, to increase the nominal capital of a corporation or company by the issue of new shares without a corresponding increase of actual capital. Stock-watering then is an operation connected with the working of joint-stock companies. Most modern States have what are called in England Company Acts, and in the United States Corporation Laws, which enable a number of people who conform to the regulations laid down to constitute themselves into a corporate body for some definite object, with definite legal rights and obligations distinct from those of the individual members of the corporation. A joint-stock company usually owes its existence to the enterprise of the promoter. He hears of a mining property or of a printing business which is for sale, and obtains a contract or an option from the owner. He procures the requisite number of persons to sign the Memorandum and Articles of Association and registers the documents with the Registrar of Joint-stock Companies. After these preliminaries have been duly executed, the certificate of incorporation is issued and the new company is born to work the mine

or to manage the printing business. A prospectus may then be issued describing the objects of the new company and inviting the public to subscribe for shares and become partakers of its fortunes. The Memorandum of Association is the charter of the new company and, besides other matters, it must contain a statement of the amount of capital with which the company is registered divided into shares of a certain fixed amount. The amount of capital mentioned in the memorandum is the nominal capital of the company and may be widely different in amount from its actual capital. Thus the promoter of a banking business who wishes to impress the public with the idea of the vast scale on which it is proposed to transact business, may put down $10,000,000 as the capital of the company, divided into shares of $50 each. It may happen that only ten shares are issued and that these are only half paid up. Thus although the nominal capital of the company is $10,000,000, its actual capital is only $250.

We have described in rough outline the formation of a joint-stock company according to English law and although the details of American law differ somewhat from the above, still the broad features are similar, and what has been said will suffice for our purpose. This much concerning the flotation of companies had to be premised, for it is precisely in this matter of nominal capitalization that stockwatering and over-capitalization takes place. Authorities are not quite agreed as to what should be the norm for regulating the amount of a company's capital. The question is of special importance in those States

which have legislated against over-capitalization; there especially it is necessary to have a recognized standard for the legal capitalization of corporations. But what is that standard to be? Is it to be the total original cost of the undertaking and actual investment from the outset; or what it would cost to replace the plant under present conditions; or the structural value, value, that is, for service and wear; or the market value of the enterprise if it were sold in open market; or, finally, its earning capacity? To show how widely estimates may vary according as one or other of these standards is taken as the basis of reckoning, we quote from Mr. W. Z. Ripley, Professor of Political Economy at Harvard, the leading case of the Interstate Consolidated Railroad Company. Professor Ripley says:

> Operating both in Rhode Island and Massachusetts, it had obtained a charter from the former State with the right to issue stock and bonds to the amount of $650,000. It then applied to the Railroad Commission for authority to issue this amount under the Massachusetts charter as well. The original capitalization of a defunct predecessor had been $875,000, of which only about $470,000 represented the actual investment, the remainder being water. Owing to the fall in prices of electrical equipment, it was established that the plant could be duplicated for about $400,000. Its present structural value was estimated to be not over $255,000, while the price paid for it at public auction by its then present holders was $152,000. Excluding the possible basis of capitalization upon earning capacity, which ranged upon estimate from nothing to $900,000, which of these other standards, between $470,000 and $152,000, ought rightly to be applied? [2]

[2] *Trusts, Pools, and Corporations*, p. 130 (1905).

German Company Law adopts the first of these, the original and total cost, as the legal standard of capitalization. At first, as Mr. Ripley shows, Massachusetts adopted the same standard. It was felt, however, that there were grave objections against this method. Large sums of money were sometimes spent foolishly or even dishonestly in floating companies; large expenditure was often incurred in "kissing" bills through legislatures. Sometimes fancy prices have to be paid for vested interests, or in the consolidation of companies — become necessary for effective working — small local undertakings have to be bought out at exorbitant rates. As Mr. Ripley says:

> These fundamental objections against original investment as a basis for capitalization have led to general acceptance of the cost of present reproduction in its place. This is the norm usually accepted by judicial appraisers, as in the recent case still pending in the courts, concerning purchase by the city in 1895 of the Newburyport waterworks. It seems to have been adopted also in appraisal of the Milwaukee street railroads in 1898 as well as in Detroit. It is the one recognized by the Massachusetts Railroad commissioners in their regulation of capitalization. The Gas and Electric Light commissioners in the same State also adhere to it closely in fixing the price of product.[3]

English opinion favors the estimated earning capacity of the undertaking as a basis for capitalization. If the undertaking will give a fair and reasonable interest on the money sunk in it so that the reasonable expectations of the shareholders who bought shares

[3] *Loc. cit.*, p. 133.

are not disappointed, it is thought that there can be no question of over-capitalization. A moralist would have no difficulty in approving any one of these recognized standards as a basis for capitalizing a company. Provided that the shareholders get fair value for what they contribute according to their reasonable expectations, and the creditors of the company, if there are any, are not wronged, and no harm is done to others, it is a matter of indifference to the moralist what may be the basis of capitalization. The moralist of course cannot tolerate over-capitalization, or capitalization largely in excess of what is right and proper according to any fair standard whatever. The practical evils of over-capitalization which make it necessary for the moralist to condemn the practice may be summed up in the words of Professor Ripley. He says:

> Over-capitalization is one of the most frequent, time-honored and persistent charges brought against industrial combinations and against corporations particularly as distinct from other forms of business organization. The general public avers, in behalf of its interest as consumer, that while of course there is no direct relation between capitalization and prices, an excess of securities craving dividends is in itself an indirect incentive to unreasonable charges. An even more cogent objection than this is that the absence of any direct relation between investment value and the volume of stocks and bonds confuses all parties concerned. This was an underlying motive in the enactment of the Massachusetts Anti-Stock-Watering Laws of 1894. For a divergence between the actual property value and capitalization may lead to exorbitant prices and dividends at the expense of the public. It invites unearned profits on the part of promoters leading to cor-

porate organization or financial readjustment in unnecessary or unmerited instances. It stimulates extravagance on the part of banking syndicates in the prices offered or paid for constituent companies. It facilitates internal mismanagement, even promotes actual fraud, by the ease with which the most alert stockholders may be confused as to the real standing of their own company. And finally it invites speculation and stock market jobbery among the public by the relatively small capital necessary to deal in, or acquire control of, considerable blocks of stock.[4]

Moreover, when a concern is largely over-capitalized its real value is obscured and there is no adequate security either for the creditor or for the shareholder. A few large dividends of an inflated company are no adequate security for the creditor; he must rest for his final security on the permanent and real value of the concern. It is obvious that the shareholders who have contributed their money in ignorance of the wide difference between the nominal and the actual capital of the concern are wronged, for only the actual capital can furnish them with the dividends, the expectation of which induced them to purchase shares. We are now in a position to study the morality of stockwatering in particular cases.

English law permits the promoter of a company to fix the nominal capital at any figure he pleases. A fee which rises progressively with the amount of capital must indeed be paid on registration, but the smallness of this fee is but a slight obstacle in the way of an enterprising promoter who for one reason or another over-capitalizes his company. The same is prac-

[4] *Loc. cit.*, p. xxiii.

tically true of many of the States of the Union. To quote again from Professor Ripley:

> Among our American commonwealths the most flagrant examples of unlimited capitalization occur under the laws of West Virginia, Delaware, and New Jersey. In the first of these no limitation whatever is placed upon stock issues beyond payment of a small registration tax. The Delaware constitution follows the usual statutory enactment of other States, prohibiting all issues of stock except for money paid, labor done, or property actually received. The absence of all administrative control, and the apparent failure of the State courts to rule adversely, naturally renders this law of no effect. New Jersey has met the issue adroitly. Its Corporation Act, as revised in 1896, recites that "nothing but money shall be considered as payment of any part of the capital stock"; except that any corporation may purchase property by the issue of securities, in which case "the judgment of the directors as to the value of the property purchased shall be conclusive." [5]

We have seen what standard Massachusetts adopts for the legal capitalization of public service corporations; for business corporations the Massachusetts Business Corporation Law, 1903, adopted the theory that "so long as incorporators are not acting fraudulently they may capitalize any property, tangible or intangible, at any amount they desire, provided that no stock may be issued at or after organization until a statement has been prepared and placed upon public record, showing the amount of stock which has been issued and the exact manner in which it is paid for." [6] Similarly, the English Companies Act, 1900, relies

[5] *Loc. cit.*, p. 122.

[6] W. Z. Ripley, *loc. cit.*, p. 389.

on publicity as a safeguard against over-capitalization. By that Act the prospectus of any company, which offers shares to the public for subscription, must among other things contain "the names and addresses of all vendors of property purchased by that company, together with the amount payable in cash or shares to the vendor, and where there have been a succession of vendors, then the amount paid to each; the amount payable for good-will (a frequent excuse for concealed fraud) is to be set out particularly: the sum paid as commission for procuring subscriptions, for preliminary expenses, and generally anything paid to the promoter must also be clearly specified, and, finally, the dates and parties to every material contract entered into during the previous three years, not being a contract made in the ordinary course of business, must be set out, together with the place where such contracts may be inspected."[7] These provisions are hardly adequate to protect investors against the evil of stockwatering. A common practice of company promoters is thus described by Mr. Montague Barlow in the volume from which we have already quoted:

In the normal course a promoter finds a flourishing industrial concern worth, say, £10,000, and decides to float it as a company for as much more as he can get; he obtains from the proprietors a contract to sell for £10,000; he then forms a small syndicate which is registered as a company; and purports to sell to it the contract or option at an enhanced price, say, £50,000; the syndicate next sells to the person who is to appear before the public as the

[7] M. Barlow ap. Ripley, *loc. cit.*, p. 423.

vendor of the business, again, of course, with an advance; probably by this time we have got to £100,000; and lastly, the nominal vendor purports to make what is called a provisional contract with another dummy called the trustee for the company, subject to adoption by the company; by this time we are in the region of high finance, and the price may be anything up to seven figures. The promoters thus keep piling up profits on each transaction, and the so-called contract with the syndicate, with the nominal vendor, and the provisional contract with the trustee for the company are obviously not real contracts, all these persons being the nominees of the promoters.[8]

The English legal attitude towards transactions of this nature is thus described in the Report of Lord Davey's Committee on the Companies Acts which was issued in 1895:

> If all this were done openly and the persons who are asked to subscribe were made acquainted with the real situation, and were told that the so-called vendor is a man of straw, and that the so-called contracts are only machinery for securing payments out of the company's money to the promoters and underwriters and their friends, there could be no legal objection. If people with knowledge of the facts like to embark on an undertaking for which they are paying, say, twice as much as the real and present owners of it are willing to sell it for, they may be wise or unwise, the speculation may turn out well or ill, but it is their own affair.[9]

Whatever be the legal attitude towards such transactions, the moralist must condemn unreservedly the selling of property to the public at a price several times above its value, and he cannot accept the plea

[8] *Loc. cit.*, p. 417. [9] Page xi.

that subscribers knew or might have known what they were doing. As a matter of fact the large majority of subscribers are incapable of forming a judgment on the merits of the case even if they had the documents before their eyes; and on account of distance, or for other reasons, they cannot take the trouble even to look at them. They rely on the good faith of the promoter and of the directors, and these take the opportunity to rob them. Even a sound concern which would pay a good dividend on a fair capitalization can only hold out a promise of loss and ruin to those who have subscribed to a capital many times the value of the property.

The normal method of watering the stock of a new company which was described above may vary almost indefinitely in its details, but the malice of the operation remains the same; the operators obtain possession of other people's money without having any just title thereto; they are guilty of injustice and must make restitution of their ill-gotten wealth. The same must be said of the crude device of issuing additional stock and then only applying part of the proceeds, or perhaps none at all, to the purposes of the company, but dividing them among the operators. Little better from the moral point of view is all stockwatering which lowers the value of the stock of the present holders without their consent or compensating advantage or necessity.

If the principles of moral theology require us to be uncompromising in these and similar cases, they allow perhaps of greater indulgence in certain other cases where individual rights are not infringed, though

the law of the country may be violated. In some States, as in Massachusetts, there are anti-stockwatering laws which bind at least public service corporations, and there is a legal limit to the amount payable in dividends, usually 8 per cent. We will select from Professor Ripley's book a few examples of the devices adopted to evade such laws as these.

Probably, the commonest of these is by the payment to shareholders of so-called stock dividends. These consist either of an outright bonus of new shares of stock or bonds, or in a mitigated form as stock sold below par or at less than market quotations. Such "melon-cutting," in the parlance of Wall street, may range as high as 100 per cent., as in the Adams Express Company dividend of 1898. The notable Boston and Albany distribution of State stock in 1882 is a familiar example. This crudest form of inflation of capital, whether up to or beyond the increasing value of the plant, is the easiest to control directly. . . . Another somewhat more subtle mode of accommodation of capitalization to enhance revenue potential, since it may not really augment the volume of securities outstanding, is to substitute stock issues for funded debt. The tendency in this direction seems to be very marked at the present time among the strongest of the American railroads, such as the New York Central, the Pennsylvania, the Central of New Jersey, New York, New Haven and Hartford, and others. In some of these, outside of Massachusetts, the primary motive would seem to be to take advantage of rights to issue securities at par, where market value is high. But in addition there would seem to be the advantage of great elasticity in future dividend possibilities, within the same limits of total capitalization. Thus a substitution of possibly 8 per cent. stock for present 4 per cent. bonds clearly permits of the absorption of greater earnings to be derived in future.

The advantages of stock issues over bonds in the way of elasticity downward is of course always to be added; as they permit of a cessation of dividend burdens during periods of depression. Probably for this reason the tendency of most reorganization schemes seems to have been in the direction of retirement of bonds in favor of stocks. . . . The gradual accumulation of a surplus, either by good management or by exceptional opportunities followed by a petition for its capitalization into stocks or bonds, constitutes one of the most troublesome problems in any attempt at strict regulation. For, as will readily be observed, in so far as such a surplus—either in the form of cash, of securities of other companies, or of additions to the original plant—represents augmented investment, it would seem to offer a proper basis for addition to capitalization. It cannot be denied that in this case the property has enhanced in value. Unfortunately for the company, however, a surplus stands too often in the public eye as witness to abnormal and undeserved earnings in the past. In those commonwealths which once provided in their early railroad charters for escheat to the State of all earnings in excess of a certain amount, usually 10 per cent; or those like Massachusetts which under the recent law of 1898 provide for a special tax upon dividends of street railways in excess of 8 per cent, such a surplus may denote an actual evasion of legal liabilities.[10]

Expedients of this sort will be of practical importance only where the law of the country restricts capitalization or the amount payable in dividends on investments. We assume of course that such laws are just, and good citizens will endeavor to conform their conduct to the laws of their country. It may be that a larger percentage than is allowed by law to be paid in dividends would be the fruit of extortion

[10] *Loc. cit.*, p. 139 ff.

and unjust dealing on the part of the corporation, and if this be so the shareholders will have no right to the excess which is the fruit of injustice. Such excess is due to those who were wronged and from whom it was extorted, and it must be restored to them. Moreover, if the limit in the amount of the dividends allowed by law was accepted by the corporation and formed part of the conditions of incorporation it must of course be adhered to like all other contracts lawfully entered into. If however the above expedients are not productive of injustice or hardship to the public or to individuals, whether belonging to the corporation or not, but are merely illegal, the question for the moralist will be — What is the obligatory force of the laws which prohibit them? This will chiefly depend upon the intention of the legislator, and as modern civil legislators as a rule have no intention of making their laws rules for the individual conscience we shall be safe in saying that they do not bind under pain of sin. In so far then as the expedients described above and others similar to them are merely against positive law they will be illegal, but not necessarily and always sinful.

The same decision will be given with respect to another operation described by Professor Ripley:

> Next in importance to the conversion of a surplus into stock as a means of increasing capitalization is the expedient of funding contingent liabilities or a floating debt. . . . The creation of such a floating debt may sometimes serve as a means to the enlargement of capitalization. This would seem to have been the case of late with public service corporations in Massachusetts, particularly the electric

light and power companies. Denied the expedient of surplus conversion into stock, both by the public policy already discussed and by the great depreciation in the cost of equipment, recourse has most naturally been made to the opposite expedient. Almost ten years ago the Gas Commissioners called attention to the desire on the part of companies managed by men of a speculative turn of mind to cover all expenditure for construction by issues of interest-bearing scrip.[11]

Of course if contracts are broken or the rights of shareholders or others violated by such a transaction it will be sinful, but in itself it would appear not to be so necessarily, however much it may be against the law. Any operation which lowers the interest on any particular stock or which affects its value must have the consent of the stockholders, otherwise it will do them an injury and therefore be sinful. This remark applies to a couple of operations described by Professor Ripley. The first

consists in gerrymandering the constituent companies, so that those strong ones oppressed with surplus earnings may have aggregated about them the roads which are less favorably situated. The claim is openly made that the Massachusetts Electric Companies, composed of forty odd suburban traction lines, is having its membership so distributed in three main groups, each to be separately operated, as to effect this end. Thus the Lynn and Boston road earning perhaps twice its legally allowed dividend of 8 per cent, is made to average up its earnings with a number of small roads which are scarcely meeting operating expenses. The result is a 6 per cent dividend upon their united capital, with a net yield to shareholders far in excess of that contemplated under the law of 1898. The other

[11] Page 144.

stockwatering device attendant upon consolidation consists merely in the substitution of a high-grade for a low-grade security. For example, a weak company whose stock is quoted at 50, is merged in a second operating corporation, with stock, bid, we will say, at 200. This latter company issues new stock worth $200, share for share, in exchange for the $50 stock, which is thereupon canceled.[12]

The same judgment applies to another operation also described by Prof. Ripley:

The final method of evasion of anti-stockwatering statutes is found in the creation of independent finance corporations to which the operating company may be leased, sold, or trusteed. Thus in 1893 the Brooklyn City Railroad Company, operating with horse-power, was capitalized at $6,000,000. At that time its power was transformed to electricity; and, as has been customary in such cases, the opportunity was seized for an increase of stock and bonds to $18,000,000. Simultaneously, the road was leased to the Brooklyn Heights Railroad Company, a tiny corporation operating only a mile of track and capitalized at $200,000. This company agreed to meet interest charges upon $6,000,000 of bonds and to pay 10 per cent upon the $12,000,000 of stocks of the leased company. Finally, in the same year, the Long Island Traction Company, incorporated under the laws of West Virginia with $30,000,000 capital, purchased the stock of the intermediary,—the Brooklyn Heights Company,—in order to absorb such surplus revenue as might remain over and above its obligations to the primary and sole operating concern. Thus was a fivefold increase of capitalization up to the desired figure finally effected.[13]

From what has been said it is obvious that stockwatering is a term which is applied to many different

[12] *Loc. cit.*, p. 145.

[13] *Loc. cit.*, p. 146.

operations of widely different moral quality. What has been said will perhaps make it easier for the student of moral theology to decide on the moral quality of any particular operation that he may meet with.

XI

BANKRUPTCY AND CONSCIENCE

Casuistry is a word with a rather bad connotation in the English language. Its secondary meaning, according to the *Century Dictionary*, is "over-subtle and dishonest reasoning." I am not concerned to deny that there may be good historical grounds for something of the evil reputation which the word possesses. It is apt to be associated in men's minds with the tortuous reasonings of the Scribes and Pharisees, with their exaggerations of lighter duties and their explaining away of the weightier matters of the law. Their desire to make the yoke of the moral law in certain places more easy for men's shoulders may also have had its parallel among some Catholic theologians; not every Catholic theologian catches or represents the mind of the Church.

Still, casuistry should not suffer for the sins and errors of some of those who have cultivated the science of conduct. Not all who profess themselves mathematicians or physicists write wisely about those branches of knowledge, and yet mathematics and physics are not held responsible for their vagaries. Neither should the great and useful science of casuistry suffer because some casuists have by their labors endangered the supremacy of the great moral law.

It is difficult to see how any one who admits that

there are moral laws or rules of conduct, can reasonably refuse to admit a science of casuistry. Anarchy and confusion would quickly prevail in a country where the interpretation of the laws was left to the judgment or caprice of private citizens. Well-trained and practised intellects are required if law is to be applied with justice, equity, and consistency to particular cases. And so, too, in morals, or the science of right and wrong, the ordinary Christian cannot be expected to apply correctly the rules of Christian conduct to all cases as they arise. He may be able to see, without much difficulty, what the noble, self-sacrificing line of conduct would prescribe in any given case; but that may not be what he is prepared to do. It would doubtless be best if we all on all occasions followed the counsels of perfection, but there is no obligation of so doing, and while human nature remains what it is, there is no likelihood of the attempt being generally made. And so the question constantly arises in daily life — What am I bound to do under these circumstances? What must I do to avoid moral guilt?

Such questions are frequently of great difficulty and intricacy, as every one will acknowledge. The judgment of the expert is not less required to solve them, than it is required to solve the nice points of the civil law. This, then, is what the Catholic moral theologian proposes to himself to do. He tries, by taking the Gospel and the Church as his guides, to draw the line between what is lawful and what is unlawful. He does not take upon himself the office of the preacher, and recommend all to follow the de-

cisions he gives. This he no more thinks of doing than does the judge while sitting in his Court. It is not for him to raise as much as possible the standard of Christian conduct, or to make people better than he found them. He is content with the humbler task of laying down what is forbidden and what is not forbidden, and leaving to others the nobler office of tracing the deeds that are becoming to the generous and the self-sacrificing.

Much of the abuse which has been heaped on Catholic and especially on Jesuit casuistry originated from not considering this scope which moral theologians proposed to themselves, and the point of view from which they regarded questions of morality. Most of the great writers on moral theology have been men of saintly lives, who never dreamed of being content in their own conduct with attaining the standard of morality which they kept before their minds in their writings. There they laid down the principles of right and wrong, discussed real or imaginary cases with all conceivable manner of circumstances in order to illustrate those principles, but they never dreamed of limiting their personal aspirations to the mere avoidance of evil. They well knew that we must aim high to attain even a passable mediocrity in conduct, and in many cases they were men who were not content to aim high, they aspired to and attained a great measure of Christian perfection. As in their own lives, so in their training of others, they did not propose the moral standard of their works on casuistry as the ideal of the Christian life. It was the least that was required, it was the line below which no one

who wished to save his soul might sink, though he might rise indefinitely above it, according to the gifts which he had received from God.

And let no one say that such work as the moral theologians of the Catholic Church have set themselves to do is useless or unnecessary. It has always had the encouragement of the Church, though some of the sectaries who broke from her at the time of the Reformation affected to despise and repudiate it. They professed to take as their guide the spirit of the Gospel as interpreted by the individual conscience, and they professed to look down upon the ecclesiastico-legal view of morality as one of the errors of Rome. However, the whirligig of time in this as in so many other departments seems to be proving that the action of the Catholic Church was and is right after all. Good and able men among the non-Catholic religious bodies are realizing the necessity of a sound casuistry as a guide of Christian conduct. Thus in the January number of the *Hibbert Journal,* in an interesting symposium on the "Alleged Indifference of Laymen to Religion," Sir Edward Russell, the well-known editor of the Liverpool *Daily Post,* writes: —

> Is there any obvious disconnection, more conspicuous among Christian than among members of other faiths, between their religion and their practically unavoidable daily lives? The reply is twofold: Firstly, this ought not to be. . . . But, on the other hand, secondly, an uncomfortable, illogical, unintelligent state of conscience is maintained by the growing up of, and acquiescence in, customs of business, practices of speculation, usages when in distant countries, and non-moral rules of peace and war and acquisition—to instance a few examples. Efforts should

be made by Christian authorities to formulate and apply ethical Christian dicta in such matters. This would need to be done with great care, and with specially cultivated sound casuistry. But it ought to be done, because "whatsoever is not of faith is sin," and laymen know they cannot serve two masters. (P. 246.)

This is well put, and justifies in a few words what Catholic moral theologians are constantly striving to perform according to the constantly changing wants of the Catholic clergy and people.

Very little experience within or outside the confessional soon convinces the Catholic priest of the practical necessity of a competent knowledge of casuistry. It is not sufficient for practical purposes to know the general theory of Christian morals. The judgment must have been trained by exercise, so as to be able to apply with accuracy the general doctrines to particular questions as they arise.

Some years ago a friend I had known at college called on me. He held a responsible position in one of the great Manchester places of business. In course of conversation he asked me what I was doing. "Trying to teach the moral theology of the Catholic Church," I modestly answered. "Oh!" he replied, "I am often puzzled by questions which I suppose you have to treat of in your official capacity;" and straightway he proposed a few. The questions were practical cases of conscience arising out of modern business relations, and it may be of interest if I put down here the result of thought and reading bestowed on them and other similar questions. I will deal in

this paper with some difficulties arising out of the law of bankruptcy.

John was a younger member of a family that had always tried to cut a figure in the world. The members of the family had been accustomed to live up to the very limit of their means, and John, who was a dashing and handsome young man, after marrying a wife of similar disposition to his own, set up an establishment for himself. John and his wife soon found that it was impossible to make ends meet with their limited resources, and in the space of a very few years they had been adjudicated bankrupt no less than three times. The worthy couple did not trouble themselves much about the matter; the only inconvenience to their mind lay in the fact that they found it more and more difficult to obtain credit. Even this difficulty, however, was to a considerable extent overcome by judicious changes of residence; they found that people who knew them only imperfectly were very confiding in the matter of loans to such an engaging and well-connected couple, and so they had a tolerably merry time of it; in short, they made bankruptcy pay.

It is obvious that John and his wife had been living largely at the expense of their too confiding creditors; they had been doing wrong in contracting debts which experience taught them there was little probability of their being able to pay, and if they want to lead honest lives they must lower their style of living and try to balance expenditure with income.

A difficulty may arise about the time of declaring one's self unable to pay one's debts. It is sometimes

possible by borrowing again and by other means to avert threatened bankruptcy for a time at least. Is it lawful to have recourse to such means?

The answer to be given to this question will depend upon circumstances. If there is any reasonable probability of being able to meet the new obligation at the proper time, there need be no scruple about contracting it, and saving one's self from bankruptcy. If, however, there is no reasonable probability of being able to do this, it becomes a fraudulent contract,—the debtor undertakes to do what he knows he will not be able to fulfil, and so he sins against justice. As to what constitutes a reasonable probability is a question which depends upon the circumstances, and it must be settled by the debtor himself, after taking the advice of his friends, if he cannot make up his own conscience on the point.

Thomas was a man of about sixty years of age, and for some time he had not been able to give that attention to his business which was required if he was to succeed. In spite of all his efforts he sank deeper into debt, failed to meet his obligations as they became due, and was adjudicated a bankrupt. He was afraid that he would be left destitute, so he kept back $500 for his private use, but surrendered all his other property to his creditors. He swore that he had made a full and true statement of his affairs, though he made no mention of the $500.

Thomas did wrong in keeping back and rendering no account of the $500, and he committed perjury by swearing that he had given a true account of his affairs. The law makes provision for the necessary

support of the bankrupt, and so there was no solid ground for Thomas' fear that he would be left destitute, and consequently no good ground for failing to account for the $500.

However, if the law made no provision for the necessary and immediate wants of the bankrupt, and if he had no prospect of being able to earn enough for his decent support and that of such as were dependent on him, so that the only prospect before him was to starve or to go to the workhouse, natural equity would then redress the too great rigor of the law, and permit the bankrupt to keep what was necessary for decent support. An unfortunate debtor cannot be justly compelled to reduce himself to destitution in order to satisfy the claims of his creditors, and the laws of modern civilized nations do not attempt to impose such an obligation.

The laws of bankruptcy in modern English-speaking countries are just and humane, and they confer a great benefit on the bankrupt by juridically relieving him of an insupportable burden of debt. They are, it is true, in some instances exacting with regard to the conditions on which the benefit is granted, but that is no more than the public good requires; grave abuses, as we know from the history of legislation in this matter, would inevitably result from a lax law of bankrupty. It is only right then that stringent conditions should accompany the granting of relief to the bankrupt; the State has a right to impose them, and the subject is bound in conscience to observe them, especially if he is required to affirm on oath that he has done so. The confessor then should urge a

penitent, who has had the misfortune to be brought into the Bankruptcy Court, to act in a straightforward way according to the laws of his country, and then he may with a safe conscience take advantage of what the law allows to the unfortunate bankrupt.

George had invested large sums of money in house property. He had borrowed a considerable portion of the purchase money under a well-grounded belief that the property would rise in value and enable him to reap a profit from his bargain. What was his dismay when, instead of rising, it steadily fell; he could not realize any portion of it, and he saw no prospect of being able to pay his debts as they became due. In his straits he went to his brother, who was one of his principal creditors and asked his advice. His brother advised him to make a declaration of inability to meet his obligations, and that as soon as possible. George promised to do so, volunteering to pay his brother in full beforehand, so that so much money at any rate should remain in the family, as he said. The brother agreed and took full payment for what was owing to him, although the other creditors had to be satisfied with fifty cents on the dollar.

George committed an act of injustice by paying his brother's debt in full, while he knew that his other creditors would have to be satisfied with less than what was due to them. He knew that his property was not sufficient to pay all his creditors in full; they had equal right to receive their due proportion of payment; he defrauded his other creditors of their due proportion when he gave more than his share to his brother, so as to keep the money in the family.

Such transactions are against natural justice, they tend to defeat the chief end of bankruptcy laws, which is to secure an equitable distribution of the property of the debtor among his creditors, and they are rightly forbidden by positive law. In England as well as in the United States such preferences are declared null and void, or at least voidable, if made within the period fixed by the law of the country. In the United States the period fixed is four months previous to the filing of the petition, in England three months. If it were discovered that such a fraudulent preference had been given to one of the creditors, the official receiver or the trustee in bankruptcy could claim the money and add it to the assets to be distributed among the creditors according to law.

A doubt might arise as to whether a bankrupt would be justified in conscience in paying a creditor in full on account of his poverty or for some such extrinsic reason. Some theologians hold that, apart from any bankruptcy law, a debtor who could not pay all his debts might for such a reason prefer one creditor to another. However, it would seem to be unlawful to do this when one contemplates bankruptcy. The law allows of no such distinction, and if the bankrupt is to take advantage of the law for his relief, it is imperative, even from the point of view of conscience, that he should conform to the requirements and conditions which the law lays down. The law is his title to relief, and the law grants relief on certain conditions; those conditions then must be loyally observed by the debtor.

There is another question of some nicety connected

with fraudulent preferences. The bankrupt does wrong in giving such a preference, as we have seen. Is a creditor who receives a fraudulent preference justified in keeping the money, or is he bound to make restitution?

There is some slight difference between the law of the United States and that of England with regard to fraudulent preferences, but we may here abstract from them, and consider the question from the purely moral point of view.

Such a creditor will of course be bound to make restitution, if the matter comes to the knowledge of the Court, and he is ordered to do so. Whether he is bound in conscience independently of such an order to make restitution is not free from doubt. He has after all only received what he had a right to, according to the terms of his contract with the debtor. The debtor did an injustice to his other creditors in paying this one in full; but the preferred creditor has no contract with the other creditors of the debtor; he is not bound like the debtor to safeguard their rights and satisfy their claims as far as possible; if he has no such obligation, and only receives what is due to him from his own contract, he does not seem to violate justice by taking payment of his debt in full, and so he is not bound to make restitution. I am confirmed in this opinion by what Mr. Brandenburg writes in his authoritative work on Bankruptcy: — "There is involved," he says, "no element of moral or actual fraud. It is simply a constructive fraud established by law upon the existence of certain facts and prohibited by it. There is nothing dishonest or illegal

in a creditor obtaining payment of a debt due him from a failing debtor; nor in his attempting by proper and ordinary effort to secure an honest debt, though such act may afterwards become a constructive fraud by reason of the filing of a petition and adjudication in bankruptcy." [1]

And again: "While such a transfer is fraudulent and voidable, it is not so because morally wrong, but because the act says it is." (P. 604.)

Against this view it may be urged with some plausibility that as the property of the bankrupt was not sufficient to pay all his creditors in full, no single creditor had a right to receive more than his just share, so that the preferred creditor sinned against justice by taking more than his share. To this, however, it may be answered that the argument holds when the property has been divided into portions, and assigned to satisfy the claims of the several creditors; but that it does not hold while the property is still undivided. When it is divided, each creditor has a right to his share, and injustice would be committed if he did not obtain his fair share; but while it remains, so to say, in bulk, all that can be said is that each creditor has a somewhat undetermined claim against the whole of the property. When therefore one creditor has received payment in full, it is not clear that he is bound in conscience, before any decision of the Court, to surrender a part for the benefit of the other creditors.

Another question of importance is whether a bank-

[1] E. C. Brandenburg, *The Law of Bankruptcy*, 3d ed., p. 599 (1903).

rupt who has obtained his discharge after paying his debts in part only, is bound in conscience to pay in full if he subsequently becomes able to do so.

The question does not arise when the creditors in consideration of the part payment which they have received expressly release the debtor from all further obligations, as, of course, they are competent to do. It is clear, too, that the natural obligation to pay one's debts in full remains in spite of bankruptcy, unless it is extinguished by competent authority. Moreover, the obligation will certainly remain, if the law of the country expressly so decides, as did the Roman Law, which the scholastic theologians generally had in view when they discussed this question. Most modern European codes contain similar provisions. However, it seems equally certain that the law of the country can extinguish the obligation of making further payments, if it pleases to do so in favor of an honest bankrupt. We say "in favor of an honest bankrupt," because the law does not intend to favor a dishonest bankrupt, nor has it the power to free such a one from his obligations. For the law cannot favor and promote injustice, as would be the case if it released a dishonest debtor from the obligation of paying his debts. The law can, however, for the public good release the honest bankrupt; for with just cause it can transfer property from one to another owner. This it certainly does by the law of prescription, and in other cases. In a commercial community there will not be wanting good reasons for such an exercise of power, for a load of debt press-

ing on the shoulders of the poor debtor kills enterprise, and injuriously affects trade. The common understanding with which debts are contracted will gradually accommodate itself to such a law, and thus by virtue of the implicit consent of the creditor, the legal discharge of the bankrupt debtor will be absolute and final, if the law so make it.

The whole question then is reduced to one of fact — What is the law of the country on the point, and what is its effect? With regard to the United States theologians have commonly held that a discharge in bankruptcy does not free the debtor in conscience from liability to pay his debts in full, if he subsequently become able to do so. However, several theologians of note thought the contrary a probable opinion.[2] Great weight should obviously be given in such a matter to the opinion of lawyers of repute; they are most likely to know the effect of the law. Mr. Brandenburg, in the work quoted above, expressly lays it down that the United States Bankruptcy Law does not free the conscience. "Since the discharge," he writes, "is personal to the bankrupt he may waive it and, since it does not destroy the debt but merely releases him from liability — that is, removes the legal obligation to pay the debt, leaving the moral obligation unaffected — such moral obligation is a sufficient consideration to support a new promise," etc. (P. 257.)

In England on the contrary both theologians and lawyers commonly hold that the law of the land frees the debtor in conscience, if the discharge be absolute

[2] Marc, n. 1022; Kenrick, II., n. 207.

and unconditional.[3] Otherwise, of course, the obligation will remain.

The same solutions would seem to hold, when after having made a composition with one's creditors, the same question arises with regard to future acquired property. The law of the United States as well as that of England regulates such compositions, and decides that when confirmed they shall have the effect of a discharge. So that in the United States one who cannot pay his creditors in full, must make up the deficiency afterwards if he can, whether he makes a composition with his creditors or goes into the Bankruptcy Court; in England, if he has acted honestly and obtained an absolute and unconditional discharge, there will be no obligation to make good any deficiency, though the conduct of a bankrupt who should volunteer to do so would be highly approved by his creditors.

[3] Crolly, III., n. 1232; Stephen, II., p. 183.

XII

MODERN SOCIOLOGY

In his *History of the Catholic Church in the Nineteenth Century,* Dr. MacCaffrey says very truly: — "The development of sociological studies in the nineteenth century has opened up a new field of inquiry for moral theologians, and has raised a host of new problems, which demand careful treatment." [1] I understand Dr. MacCaffrey to refer not only to socialism with all the problems connected with it, but to what professes to be the new science of sociology. Much of the interest taken in this new science may be attributed to a natural reaction from the now discredited doctrines of liberalism. The liberalism of the nineteenth century was above all things individualistic. It admitted, indeed, the necessity of society or the State, but a cardinal point of its teaching insisted that State action should be restricted to the necessary defense of life and property from violence and fraud. Although J. S. Mill thought these limits too narrow, yet he, too, maintained that with regard to State action, letting alone should be the general practice. "Every departure from it," he says, "unless required by some great good, is a certain evil." [2] We have advanced very far indeed beyond this *laissez*

[1] Vol. II., 485.

[2] *Principles of Political Economy,* Book V., c. ii.

faire theory of the powers of the State. The modern State not only educates the children of the people free of cost, but it is beginning to feed them as well and have them medically inspected. It grants pensions to the aged poor without regard to whether they have led thrifty lives or not. It unites and dissolves marriages, and indications are not wanting that in the name of eugenics it may some day endeavor to have a voice in determining who is to marry and who is to remain celibate. It takes a share of the unearned increment of property, and Socialists wish it to assume the ownership of all productive property and of the means of distribution of wealth. The theory of the influence of society on the individual has more than kept pace with the State's inroads on his private life and rights. A modern authority on the subject says, in effect: "Instead of the old antithesis between the individual and society, modern science discovers a complete harmony between them. Neither could exist without the other. The science of the individual and the science of society are inseparable; every philosophical and moral question will end by being a social question. The psychologist in studying the individual sees that his faculties and tendencies are a heritage from the race and the species, and so from society. What would be left of the individual if we took from him all that he owes to society? The moralist who without bias tries to find a natural origin for the laws of his science discovers them in the general conditions of society, and the conditions of society are nothing but the conditions of physical and intelligent life. The whole universe

is but one vast society in process of formation, and so social science, the crown of all the sciences, will one day disclose to us the secret of the universe." [3]

Similarly, Mr. B. Kidd, one of the chief authorities on the subject in England, writes: "According to the old conception the meaning of society was to be reached through a study of the individual. The study of the individual's mind and of the individual's interests constituted the science of man. Society was considered as an aggregation of these. Put equally briefly the meaning of the ruling conception of the new era in the application of the theory of organic evolution to society almost reverses this position. According to the new conception the individual is only to be understood through the meaning of the social process. . . . It is in the social process alone that we have the full meaning of man and of the laws which are governing his development. The social process has its own interests, its own experiences, its own laws, its own psychology, its own meaning. And it is this meaning of the social process which is everywhere in the ascendant in history, controlling the meaning of the individual, slowly imposing itself upon his interests, and in the end completely governing his development. . . . The real truth is that it is the meaning of the social process which is constructing the human mind. This is the most pregnant idea in Western thought at the present time, and it is with preliminary aspects of it that recent developments like Pragmatism are beginning to be occupied." [4]

[3] A. Fouillée, *La Science Sociale Contemporaine*, Preface, p. vi.
[4] *Principles of Western Civilization*, 1908, pp. vii., viii.

Whereas, then, fifty years ago the tendency was to exalt the rights of the individual citizen at the expense of the power of the State, nowadays the tendency is all the other way. What is called the modern science of sociology throws light on this tendency, and so no apology is needed for treating the subject here.

Sociology, as the word implies, is the science of man in society. Some, with Froude and Kingsley, whom Herbert Spencer endeavored to refute,[5] deny that such a science is possible. Of those who maintain its possibility and who have tried to formulate its principles, all admit that the science does not exist as yet. It is as yet in the analytic stage in which the phenomena belonging to the science are being observed, collected, and compared. A few empirical laws have already been formulated, but it cannot be said that there is anything like general agreement on a complete and systematic body of sociological doctrine. One sign of this incipient stage of the science is the number of different systems which are in vogue. Mr. Lester F. Ward, in a recent work, enumerates twelve of these, and adds another of his own to the number.[6] For the purposes of this paper we may divide the different systems into objective and subjective. The objective are materialistic while the subjective are idealistic or pantheistic. The former derive their descent through Herbert Spencer from Comte, and they are much more popular and widely diffused than the latter. Comte, as is well known,

[5] *The Study of Sociology*, p. 37.
[6] *Pure Sociology*. London, 1909.

divided the history of philosophy into three periods, the theological, the metaphysical or critical, and the positive. During the first period, which lasted till the dawn of the Protestant Reformation, natural phenomena were explained by the agency of supernatural beings. This theological explanation was discredited by the metaphysical or critical school, which followed it, but however powerful criticism proved as a solvent, it was incapable of building up a system which could be generally accepted. To do this was reserved for the third period, the truly scientific period, which rests its doctrines on the firm basis of exact observation of certain and verifiable facts. The last and the most general of all the positive sciences, according to Comte, was social physics, a new science, which he was the first to call by its name — sociology. Herbert Spencer adopted the name and much of the teaching of Comte about the new science. He tells us that "His [Comte's] mode of contemplating the facts was truly philosophical. Containing, along with special views not to be admitted, many thoughts that are true as well as large and suggestive, the introductory chapters to his *Sociology* show a breadth and depth of conception beyond any previously reached. Apart from the tenability of his sociological doctrines, his way of conceiving social phenomena was superior to all previous ways." [7]

However, as Comte lived in pre-Darwinian days, the dogma of fixity of species to which he adhered kept his conceptions of individual and social change within limits much too narrow, says Spencer. Then he adds:

[7] *The Study of Sociology*, p. 325.

"Nor did he arrive at that conception of the Social Science which alone affiliates it upon the simpler sciences — the conception of it as an account of the most complex form of that continuous redistribution of matter and motion which is going on universally. Only when it is seen that the transformations passed through during the growth, maturity, and decay of a society, conform to the same principles as do the transformations passed through by aggregates of all orders, inorganic and organic — only when it is seen that the process is in all cases similarly determined by forces, and is not scientifically interpreted until it is expressed in terms of those forces — only then is there reached the conception of Sociology as a science, in the full meaning of the word." [8]

There we have, stated in plain, bald language, the fundamental postulate of modern sociology. All that man is or does, whether individually or in society, is the result of the necessary transformations of matter and motion. When the Greeks fought at Marathon and when Bismarck dispatched the Ems telegram which precipitated the Franco-German war, their actions were as inevitably determined by the forces of nature as are the waters which flow over Niagara. The different forms which human society assumes, the various constitutions and laws under which men live, their religious, political, and social ideas are as truly the necessary product of the evolution of matter and force, as are the various forms into which matter crystallizes. There is no science of society in the strict sense unless its phenomena are interpreted in

[8] *The Study of Sociology*, p. 325.

the light of this fundamental postulate. That is why the labors of Plato, Aristotle, Cicero, and other philosophers of antiquity who wrote works on the State, are dismissed as pre-scientific, and as scarcely worthy of notice. St. Augustine, St. Thomas Aquinas, and the other schoolmen, are not thought worthy even of being mentioned in an historical survey of writers on sociology. The situation is sufficiently remarkable, and would hardly be credited by one who had not read the authors in question. It is also of great importance, for it is already beginning to produce its inevitable effects in several directions. Mr. Lester F. Ward, in his *Applied Sociology,* published in 1906, calls attention to one important result. He writes: "On the part of scientific men the study of evolution in general, and social evolution in particular, has given rise to a sort of scientific pessimism. . . . The latest teachings of modern science have thus thrown a sort of pall over the human mind and introduced a new philosophy — a philosophy of despair, it may be called, because it robs its adherents of all hope in any conscious alteration of the course of nature with respect to man, and denies the efficacy of effort." [9]

Another important result is the support which this materialistic doctrine of society gives to the principles of socialism. Marx and his followers made great use of the doctrine.

I have no intention of undertaking here a refutation of this materialistic conception of the universe. The important thing to notice is that it is taken for granted in modern sociology, and that no other philos-

[9] *Op. cit.*, p. 14.

ophy of the world is accepted as scientific. In spite of the testimony of Lord Kelvin and many other scientists of the highest standing, the action of a Creator is quietly ignored. To bring in the action of a supernatural Being is to revert to the infancy of human speculation. As I have said, the extent to which this materialistic explanation of society has been carried would hardly be credited by one who had not read the authors in question. In some of them the doctrine is more or less veiled, but in others it is set forth with unblushing frankness. It will be worth while to take a few representative writers on sociology and allow them to expound the principles of the science as far as possible in their own words.

And, first of all, I will quote a few passages to show that I am doing modern sociology no injustice when I say that it has been monopolized and developed by writers who are not only evolutionists, but upholders of the mechanical theory of evolution.

Mr. F. H. Giddings writes: "Since Comte, sociology has been developed mainly by men who have felt the full force of an impulse that has revolutionized scientific thinking for all time to come. The evolutionist explanation of the natural world has made its way into every department of knowledge. The law of natural selection and the conception of life as a process of adjustment of the organism to its environment have become the core of the biology and the psychology of to-day. It was inevitable that the evolutionary philosophy should be extended to embrace the social phenomena of human life. The science that

had traced life from protoplasm to man could not stop with explanations of his internal constitution. It must take cognizance of his manifold external relations, of the ethnical groups of the natural societies of men, and of all the phenomena that they exhibit, and enquire whether these things also are not products of the universal evolution. . . . On evolutional lines then, and through the labors of evolutionist thinkers, modern sociology has taken shape. It is an interpretation of human society in terms of natural causation. It refuses to look upon humanity as outside of the cosmic process, and as a law unto itself. Sociology is an attempt to account for the origin, growth, structure, and activities of society by the operation of physical, vital, and psychical causes, working together in a process of evolution." [10]

The distinction made here between physical, vital, and psychical causes must not blind us to the fact that according to the dominant school of sociologists all causes are fundamentally physical. As the same writer says in another place: "Social evolution is but a phase of cosmic evolution. All social energy is transmuted physical energy. The conversion of physical into social energy is inevitable, and it necessarily occasions those orderly changes in groupings and relationships that constitute development. Or, if the statement may be made in slightly different terms, the original causes of social evolution are the processes of physical equilibration, which are seen in the integration of matter with the dissipation of

[10] *The Principles of Sociology*, p. 7 (1909).

motion, or in the integration of motion with the disintegration of matter." [11]

It follows from this that human societies are nothing but very complex machines, as Mr. Lester F. Ward expressly affirms. "In general," he says, "it may be said that society as a whole, including all its structures and institutions, both general and special, constitutes a *mechanism*. The structures are not chaotic and haphazard, but symmetrical and systematic. They conform to the universal law of evolution which creates the spheres of space and the adapted forms of organic life." [12]

This mechanical theory of society implies, of course, that there is no such thing as free will. This is admitted, and even insisted on, by the modern sociologist. Mr. Lester F. Ward writes: "Sociology, therefore, can only become a science when human events are recognized as phenomena. When we say that they are due to the actions of men, there lurks in the word *actions* the ghost of the old doctrine of free will, which in its primitive form asserts that any one may either perform a given action or not, according as he may will. From this point of view it is not supposed that any event in human history needed to have occurred. If the man whose actions caused it had willed otherwise, it would not have occurred. That is, the old form of the doctrine of free will maintained that men might have willed otherwise than they did. It is not merely that they might have acted differently if they had willed to do so, but that they

[11] *Op. cit.*, pp. 363, 364.

[12] *Outlines of Sociology*, p. 170 (1909).

might have willed to act differently. If we substitute wish for will, as of course we may, since it is simply a peculiarity of the English language, that there are two words for the same thing which in other languages is expressed by the same word (*volere, wollen, vouloir,* etc.) the doctrine becomes that men might have wished to act otherwise than they did wish to act. This is a violation of the metaphysical axiom of contradiction, or, as Sir William Hamilton more correctly calls it, non-contradiction. That axiom is that a thing cannot both be and not be. In other words, the old-fashioned doctrine of free will assumes that men may act differently from what they do act irrespective of character and environment. If this were so, there could certainly be no science of action, no philosophy of history, no sociology. There would be no social phenomena, but only arbitrary actions due to no true cause, and all power of prevision or prediction would be wanting." [13]

A German author, who wrote in the year of grace, 1895, is quoted as the authority for this summary demolition of the doctrine of free will. No comment is called for.

Mr. B. Kidd agrees that the sociological process is involuntary and necessary.[14]

Whether society should be called an organism, and of what kind, is largely a question of terminology. Spencer held that it is an organism of a very real kind. "Metaphors," he says, "are here more than metaphors in the ordinary sense. They are devices

[13] *Pure Sociology*, p. 57 (1909).
[14] *Social Evolution*, p. 41.

of speech hit upon to suggest a truth at first dimly perceived, but which grows clearer the more carefully the evidence is examined. That there is a real analogy between an individual organism and a social organism, becomes undeniable on observing that certain necessities determining structure are common to both." [15] In other words he developed this idea and traced the analogy in minute detail and with much ingenuity.[16] Mr. Giddings seems doubtful as to whether society should be called an organism at all. At any rate, he says, it is not a physical, but a psychical organism essentially, with a physical basis. Mr. Lester F. Ward admits that it is an organism, but one of the low and undeveloped type. He writes: "On any 'social organism' theory government must be regarded as the *brain* or organ of consciousness of society, and the small amount of 'brains' shown by government is simply in confirmation of the conclusion reached in another chapter that society represents an organism of low degree." [17]

Whatever they may say about the question of terminology, the representative sociologists of this school agree that society is a product of the evolution of natural forces. These natural forces as productive of society are called "social forces," or "idea forces," though they are merely transformations of the one physical force which permeates the universe. They are sometimes called psychical, volitional, mental, and these terms might lead the unwary reader to think

[15] *The Study of Sociology*, p. 326.
[16] *Principles of Sociology*, I., pt. ii., c. 2; *Essays*, II., 143.
[17] *Outlines of Sociology*, p. 268.

that a spiritual explanation of society was mixed with the mechanical. This would be to misunderstand the doctrine altogether. It is obvious that what is called intelligence and affection play a large part in producing social phenomena; but according to the writers whose views we are expounding, both intelligence and affection are merely the manifestations of a very complex mechanism which is the evolutionary product of physical and chemical forces. On this point the modern sociologist has quite made up his mind. Mr. Giddings says: "The real question is not on the existence or the importance of volitional and of distinctively sociological causes. It is whether these are underived from simpler phenomena than themselves, and are undetermined by processes of the physical and organic world. To this question the answer of sociology is an unqualified negative. Sociology is a product of those new conceptions of nature — natural causation and natural law — that have grown up in scientific minds in connection with doctrines of evolution and the conservation of energy. . . . Therefore, while affirming the reality of sociological forces that are distinctly different from merely biological, and from merely physical forces, the sociologist is careful to add that they are different only as products are different from factors, only as protoplasm is different from certain quantities of oxygen, hydrogen, nitrogen, and carbon; only as an organism and its co-ordinated activities are different from a group of nucleated cells having activities that are unrelated." [18]

The course of the evolution of social forces into the

[18] *The Principles of Sociology*, p. 416 ff.

complex phenomena exhibited by human society has been worked out in great detail by Mr. Lester F. Ward in several of his works. He classifies the social forces into those that seek pleasure, avoid pain, the sexual and amative desires, the parental and consanguineal affections, the æsthetic, emotional or moral, and intellectual forces. These forces generate, preserve, and elevate society, and how they themselves are derived from original physical forces is explained in this way.

The appetites or passions are the genetic source of all man's other faculties, the seat of all psychic power, the basis of any true science of mind and of sociology. Appetite or desire is a true *vis a tergo,* and acts by impact like any other physical and efficient cause. Thus an empty stomach necessarily impels the sentient being to seek the satisfaction of repletion. Satisfied desire causes pleasure, whose opposite is pain. Pleasure is good, it leads to an increase of life; pain is evil and leads to extinction. While all creatures seek their good, or the satisfaction of their wants, natural selection eliminates those which are not in conformity with the conditions of existence, and develops those that are in conformity with them. These principles are verified throughout all non-rational nature, and their application to the problems of sociology is obvious.[19]

The chief difficulty arises in the explanation of the evolution of intellect. It may be admitted, says Mr. Ward, that as yet this is unknown. The following theory is offered as an hypothetical explanation of

[19] *Outlines of Sociology*, p. 143 ff.

the matter. Intellect is not a force but a directing agency. It arose in this way. External objects register their impressions on the sentient organs, and the gradual accumulation of a mass of such impressions and their simultaneously felt presence render it possible to make comparisons and recognize differences and samenesses. Thus arises the intellectual process which is a perception of relations. Intellect thus enables the rational creature to perceive what will satisfy its wants, and if it cannot attain the satisfaction of those wants directly, it can perceive what means may be taken towards their satisfaction indirectly. Intellect can thus switch off the movement caused by desire of the end, and direct it to the attainment of the means by which the end may be finally secured. The evolution of this wonderful power of reason in man has given him command of the forces of organic and inorganic nature which he can use for the attainment of his ends. It has thus been the cause of his wonderful progress and of all the civilization to which he has attained.[20]

Although my purpose in this paper is to show what modern sociology is rather than to attempt its refutation, I cannot refrain from making a few criticisms of the system. We have seen that nothing but matter and motion are postulated in order to explain the phenomena of sociology, and in fact everything else. When evolution begins motion is regarded as hitting out blindly in all directions. If it happens that one of these pulses of matter in some way secures an advantage over others which tends to its preservation

[20] *Outlines of Sociology*, p. 240 ff.

and development, an upward stage in evolution has taken place. It was thus that the faculties of sensation and of intellect were evolved. To quote Mr. Lester F. Ward: "There is no true economy in the operation of the law of nature. It is a sort of trial-and-error process and involves enormous waste. I have endeavored to formulate what may be called the law of biologic economics, with the result that while every creation of organic nature has within it the possibility of success, that success is only secured through the multiplication of chances. . . . This saves the expense of trying to go in all the impossible directions with the resultant failure. Yet this last is nature's method. Not only must we conceive the effort as proceeding from the center of a circle, but we must usually conceive it as proceeding from the center of a sphere." [21] On another page of the same book Mr. Ward says: —"It must be remembered that the intellect or telic power was developed as an aid to the will for the better satisfaction of desire. But for its value as such it could not have come into existence under the biologic law of advantage [Mr. Ward's term for natural selection]. It is as much a product of that law as any useful organ in an animal or plant." [22]

So that after all Democritus and Lucretius were right substantially; this orderly world is the resultant of a fortuitous concourse of forces, if not of atoms. Chance has presided at all the steps that have been taken in the upward progress, and it rules the world. The latest phase of philosophy is a recurrence to that

[21] *Outlines*, p. 254. [22] *Outlines*, p. 247.

with which it began. It is true that Mr. Ward affirms that when reason appeared on the scene the primordial process of evolution was reversed. Up to rational man the environment had molded the course of development; when rational man appeared, he began to mold his environment to suit his needs and tastes. This is true; it shows how difficult it is for philosophy to stifle common sense; but Mr. Ward asserts it at the expense of consistency, for it is out of harmony with his system. If man is himself a bundle of physical and necessary forces, his whole activity is merely the activity of those forces; every thought, word, and action is the necessary outcome of their interaction. There is no room for and no possibility of a conflict between the forces of mind and those of nature. Other writers of the same school are much more logical than Mr. Ward. We may quote M. Durkheim, one of the best-known members of the school on the continent. This author writes: "La civilisation est elle-même une conséquence nécessaire des changements qui se produisent dans le volume et dans la densité des sociétés. Si la science, l'art, l'activité économique se developpent, c'est par suite d'une nécessité qui s'impose aux hommes; c'est qu'il n'y a pas pour eux d'autre manière de vivre dans les conditions nouvelles où ils sont placés. Du moment que le nombre des individus entre lesquels des relations sociales sont èstablies est plus considerable, ils ne peuvent se maintenir que s'ils se spécialisent davantage, travaillent davantage, surexcitent leurs facultés; et de cette stimulation générale résulte inévitablement un plus haut degré de culture. De

ce point de vue, la civilisation apparait donc, non comme un but qui meut les peuples par l'attrait qu'il exerce sur eux, non comme un bien, entrevu et désiré par avance, dont ils cherchent à s'assurer par tous les moyens la part la plus large possible, mais comme l'effet d'une cause, comme la résultante nécessaire d'un état donné. Ce n'est pas le pôle vers lequel s'oriente le développement historique et dont les hommes cherchent à se rapprocher pour être plus heureux ou meilleurs; car ni le bonheur, ni la moralité ne s'accroissent nécessairement avec l'intensité de la vie. Ils marchent parce qu'il faut marcher, et ce qui détermine la vitesse de cette marche, c'est la pression plus ou moins forte qu'ils exercent les uns sur les autres, suivant qu'ils sont plus ou moins nombreux." [23]

Even more serious difficulties than a recurrence to a fortuitous concourse of forces are caused by the mechanical explanation of the gradations existing among creatures. As according to that theory all creatures are but different manifestations of the one universal and physical force, it follows that life, sensations, and intellect are nothing but different forms of motion among particles of matter. This, as we have seen, is not only admitted but insisted on, by the writers under review. It is admitted that the actions which we call vital, sensitive, and intellectual, are altogether different from, and in many ways opposed to, the actions of merely physical forces. It is admitted that life has never been known to originate from merely physical forces, and that all attempts to

[23] *De la Division du Travail Social*, p. 327.

produce it have failed absolutely. And yet mechanical evolutionists obstinately cling to their dogma. It has been so, because it must have been so, on the principles of evolution. To state the argument in Mr. Spencer's words: "If there has been Evolution, that form of it here distinguished as super-organic must have arisen by insensible steps out of the organic." [24] To help out the lameness of the argument, Mr. Ward appeals to what he calls scientific faith. "The theory of units," he says, "is applicable to every true science in proportion as it can be reduced to exact measurement. In mechanics, astronomy, and physics the phenomena can, for the most part, be thus reduced, but in the more complex sciences, at least in their present state, this can be done only to a limited extent. It must not, however, be inferred from this that exact laws do not prevail in these domains. They are as rigid here as in the simpler ones, and the only imperfection is in our knowledge of them. The acceptance of this statement is what constitutes scientific *faith*. Those who do not accept it and doubt the uniformity and invariability of natural law in the fields of life, mind, and human action, simply lack faith in the order of the universe." [25] On a subsequent page the same author says: "In the advanced stages of human development when intellectual and moral influences have entered the field the case is still more complicated, but even then, if there is a social science, what I have characterized as scien tific faith, when it is fully developed, does not permit

[24] *Principles of Sociology*, I., p. 4.
[25] *Outlines of Sociology*, p. 141.

any doubt to come in and qualify in the least the universal law, and we must say, with Immanuel Kant, that if we could investigate all the phenomena of man's volition to the bottom, there would not be a single human act which we could not with certainty predict and recognize as necessarily proceeding from its antecedent conditions." [26]

It is hardly necessary to point out how entirely unscientific this position is. Ridicule is poured on the old philosophy and theology because, as it is asserted, they appealed to unproved and unverifiable dogmas. But here we have scientists appealing to faith, to unproved and unverifiable dogmas to explain not what is mysterious, but facts which are absolutely opposed to the explanation.

In the meantime great and irreparable harm is being done in the field of practical conduct. The authors whose teaching we are criticizing, maintain that religion and codes of morals have been invented by society in order to put a check on individualistic and destructive tendencies. It was necessary to cheat people into being self-restrained for the benefit of the race. But what influence are such lying checks likely to exercise when the deception has been discovered? Indeed, Mr. Ward himself openly abandons those old-world devices. He preaches the new gospel in this wise: "But most important of all is the growing sense of *good* which equally characterizes the progress of intelligence. Not merely does man more and more value life and shrink from pain, but he progressively enhances his estimate of enjoyment, and

[26] *Outlines*, p. 150.

properly so. This is to him the only good, and having been developed as a correlate of function it is safe in the long run to trust it as the expression also of universal or cosmical good — or, if any prefer, of divine good. It has served this purpose well thus far, and upon those who deny it this function rests the burden of proof. What specially concerns the sociologist is the fact that with the development of the race more and more attention has been devoted to attaining the satisfactions of life, until these become in the most advanced societies the real if not the avowed ends of existence." [27]

So that Epicurus and the pig philosophy were right after all! The truth is that the loud-sounding pæans about the utter change in man's outlook that has been brought about by the theory of evolution have been much overdone. Even if the evolution theory as distinguished from the mechanical theory of the universe be accepted, it leaves the old and fundamental questions untouched and unsolved. The inevitable reaction is already setting in, and this is beginning to be recognized by the best thinkers of the day. Thus Professor W. R. Sorley writes: "It is obvious that, in mentioning these points, I am referring to matters of ancient as well as present controversy. On them I have no intention of dwelling, partly because the subject is so vast, but also because it is enough for me to have shown that the theory of evolution still leaves the question open. That theory has widened our view of the world and tended to unify our view of its history. But it was a mis-

[27] *Outlines of Sociology*, p. 158.

take on Huxley's part to make it claim the throne of the world of thought: it is not a philosophy, but a scientific generalization which leaves the questions of philosophy unanswered. Evolution is not the real claimant, but mechanism; throughout the ages mechanism has been a pretender to the throne, but a flaw has always been found in its title. I have argued that the flaw remains even after the promulgation of the evolution theory; and if authority were wanted to back the argument, it might be found in words written by Darwin in the last year of his life, 'If we consider the whole universe, the mind refuses to look at it as the outcome of chance — that is, without design or purpose.'" [28]

So, then, the mechanical theory of the universe and of man has never satisfied the best minds, and it does not satisfy them to-day. There is another school of social science which traces its descent from Plato and Aristotle, whose genius it is too well acquainted with to despise. Unfortunately in avoiding one extreme it has fallen into the opposite. The mechanical theory sees nothing in the universe but matter and force, while the theory with which we are now dealing sees nothing there but mind. It interprets Plato and Aristotle in a pantheistic sense; Christian dualism it ignores. It recognizes the beginnings of true social theory in the modern world in the writings of Rousseau. From Rousseau it traces the tradition through Kant, Fichte, Schelling, and Hegel. Those who owe

[28] *The Interpretation of Evolution*, a paper read before the British Academy, Nov. 24, 1909.

allegiance to Hegel are numerous among the best philosophic minds in England, and among sociologists or political philosophers we may mention such names as T. H. Green, Bradley, Wallace, and Mr. B. Bosanquet. It will not be out of place to trace very briefly the connection of ideas in this movement, especially as it is the key to many of the secrets of modern thought not only in philosophy, but in literature, politics, and religion. Romanticism in literature, liberalism in politics, and the modern idea that religion is a sentiment or feeling, may all be traced to Rousseau.

"Man is born free, and everywhere he is in chains," is the first sentence of the first chapter in Rousseau's *Contrat Social,* published in 1762. It was the trumpet note which gave the signal for the era of revolution to begin. Freedom is man's inalienable birthright and his distinctive quality. To renounce one's freedom is to renounce one's humanity. Not to be free is a renunciation of one's rights as a man, and even of one's duties, for the slave has neither rights nor duties. Man, however, though born free, must live in society; in isolation his very freedom is not safe. To live in society means to live under government. But government is the restriction of one's natural liberty. Hence the fundamental problem in politics and in social theory is, in the words of Rousseau: "To find a form of association which shall defend and protect, with the entire common force, the person and the goods of each associate, and by which, each, uniting himself to all, may, neverthe-

less, obey only himself, and remain as free as before." [29]

This is the famous paradox which Rousseau essays to solve by his device of the social contract. Men were to meet together, and by a common act surrender so much of their liberty as was necessary for the purpose of government into the hands of representatives chosen by themselves, and in obeying their representatives they only obeyed themselves. "The essence of this social pact," says Mr. Bosanquet, quoting Rousseau, "is further reducible to the following formula: 'Each of us puts into the common stock his person and his entire powers under the supreme direction of the general will; and we further receive each individual as an indivisible member of the whole. Instantaneously, in place of the particular person of each contracting party, this act of association produces a moral and collective body, composed of as many members as the assembly has voices, which receives from this same act its unity, its common self (*son moi commun*), its life, and its will. This public person which thus forms itself, by the union of all others, used to take the name of city, and now takes that of republic or body politic, which is called by its members State when it is passive, Sovereign when it is active, Power when comparing it with others.'" [30]

The theory is neither historical, nor consistent, nor practical, as stated by Rousseau, but Mr. Bosanquet shows how it may be interpreted in an

[29] B. Bosanquet, *The Philosophical Theory of the State*. p. 89.
[30] *The Philosophical Theory of the State*, p. 92.

idealistic sense in the following manner. "Putting aside the defective terminology, and bearing in mind that Rousseau considers himself to be analyzing the essence of that act or character 'by which a people is a people,' we find in this passage very far-reaching ideas. We find that the essence of human society consists in a common self, a life and a will, which belong to and are exercised by the society as such, or by the individuals in society as such; it makes no difference which expression we choose. The reality of this common self, in the action of the political whole, receives the name of the 'general will,' and we shall examine its nature and attributes in the following chapter." [31]

But how is the paradox to be solved? Modern states are said to be democratic and self-governed; does not the idea of self-government involve a contradiction? As Mr. Bosanquet says: "When the arbitrary and irrational powers of classes or of individuals have been swept away, we are left face to face, it would seem, with the coercion of some by others as a necessity in the nature of things. And, indeed, however perfectly self-government has been substituted for despotism, it is flying in the face of experience to suggest that the average individual self, as he exists in you or me, is *ipso facto* satisfied, and at home, in all the acts of the public power which is supposed to represent him. If he were so, the paradox of self-government would be resolved by the annihilation of one of its factors. The self would remain, but government would be superfluous; or else

[31] *Ibid.*, p. 92.

government would be everything, and the self annihilated."[32]

Bentham, J. S. Mill, and the Liberals admitted the contradiction and sought a practical solution and safeguard for the liberty of the subject by restricting the powers of government as far as possible. According to them it was the province of the government to defend the lives and property of its subjects and let everything else alone. That theory has been found by experience to be unworkable and it is now universally discredited. The idealists solve the problem by resorting to Hegel's philosophy of identity. The subject and the State are one, not metaphorically and in interest merely, but in reality. According to Hegel, the universal and absolute being, which is at the root of all things is Idea. The Idea as Mind or Thought develops itself in the manner of a syllogism in a logical process. Thus absolute and indeterminate being implies being conditioned by the limitations of space and time. This is nature, the opposite of mind; but nature seeks ever to return to its source, and find itself again in the unity of the idea from whence it issued. Just as science develops and progresses by ever advancing through lower to higher generalisations, so the Idea is ever striving to express itself more perfectly and adequately in new forms. These new forms differ from the truths of science in that they are permanent facts or aspects of the organised whole. "In science," says Mr Bosanquet, "it may or may not be

[32] *Ibid.*, p. 75.

the case that the connection which has led to a discovery enters permanently as a discernible factor into the structure of knowledge. The re-organization of experience may sweep away the steps which led to it. But in the living fact of society this is not so. Its many sides are actual and persist, and the emphasis laid from time to time on the principle of each — *e.g.,* on positive law, on family ties, on economic bonds — merely serves to accent an element which has its permanent place in the whole. Thus, there must always be family ties and economic bonds." [33]

Every development is a distinct logical process as thesis, antithesis, and synthesis. The development of the modern State, according to the theory of Hegel, may be described as follows, keeping close to Mr. Bosanquet's text.

The State is the realization of freedom. By freedom, however, Hegel does not understand mere absence of constraint, but the capacity for being and realizing one's true or higher self. "It is just freedom that is the self of thought; one who repudiates thought and talks of freedom knows not what he is saying. The oneness of thought with itself is freedom, the free will. Thought, only taken in the form of will, is the impulse to break through one's mere subjectivity, is relation to definite being, realization of one's self, inasmuch as I will to make myself as an existent adequate to myself as thinking. The will is free only as that which thinks. The prin-

[33] *The Philosophical Theory of the State,* p. 257.

ciple of freedom dawned on the world in Rousseau, and gave infinite strength to man, who thus apprehended himself as infinite." [34]

The story of mind begins long before free mind appears on the scene and continues long after. Hegel's "mind" is not a separable entity, and throughout the story no such entity has appeared. "The 'free mind' does not explain itself and cannot stand alone. Its impulses cannot be ordered, or, in other words, its purposes cannot be made determinate, except in an actual system of selves. Except by expressing itself in relation to an ordered life, which implies others, it cannot exist. And, therefore, not something additional and parallel to it, which might or might not exist, but a necessary form of its own action as real and determinate, is the actual fabric in which it utters itself as Society and the State. This is what Hegel treats in the second division of the *Philosophy of Mind* under the name of Mind Objective. It is not for him ultimate. A particular society stands in time, and is open to criticism and to destruction. Beyond it lies the reality, continuous with mind as known in the State, but eternal as the former is perishable, which as Absolute Mind is open to human experience in Art, Religion, and Philosophy." [35]

Right or Law is the actual body of all the conditions of freedom, it is the realm of realized freedom, it is the mind as actualized in Society and the State. Law in the directest possible sense is what we call

[34] *The Philosophical Theory of the State*, p. 240.
[35] *The Philosophical Theory of the State*, p. 255.

the letter of the law, the bare fact that it is a rule of the world we live in. The observance of law in this sense is legality. Against this legality rises the protest of conscience, especially the Protestant conscience, which refuses to be under the law, and only embraces the good because it is good, and because the conscience apprehends it as good. From the opposition of law and conscience issues the synthesis of the Ethical system, and this expresses the truth contained in the two opposites. The Ethical system or Social ethics is the moral life led by a good citizen who recognizes the laws, institutions, and customs of his country as the expression of his own best self, and observes them on that account. Hegel "introduces reflective morality or conscientiousness into the sphere of Right, to represent the full nature of mind, which is only exhibited in a consciousness which pursues its aims of its own choice and for their own sake. . . . The Ethical system is the idea of freedom developed into a present world, and into the nature of self-consciousness." [36]

The Ethical system, the mind and conduct of the citizen in Christendom, may be regarded as affirming freedom in three principal aspects, necessarily connected, and supplementing one another. Outwardly these aspects are different institutions, inwardly they are different moods and dispositions of the one and indivisible human mind. These institutions are the Family, Bourgeois Society, and the State in the strict sense. The family is the ethical factor which stands nearest to the natural world,

[36] *The Philosophical Theory of the State*, p. 266.

it first represents the fact of the natural basis of social relations, being the embodiment of natural feeling in the form of love. The family is a factor in the rational whole, the State, and hence its nature and sanction are ethical, it rests neither on mere feeling nor on mere contract. It has a public side, and is an organ of public duties in the bodily and spiritual nurture of the children. The monogamous family alone can count as a true element of the ethical order. The monogamous family is naturally and necessarily, to some extent, a unit in respect of property. The mature man or woman on leaving the shelter of the family finds himself in a world of conflicting self interests. He has his living to make, he is tied to others only by the system of wants and work, and by what is necessary to these, police functions and the administration of justice. This phase of social life, and the temper and disposition which it engenders is Hegel's Bourgeois Society. It is the opposite extreme of life and mind to that embodied in the family. This Bourgeois Society is the aspect of the social whole insisted on by the classical political economy, society held together by the nexus of cash payment. We must allow Mr. Bosanquet to describe the synthesis of these two opposites in his own words: "The State proper, or political constitution, presents itself to Hegel as the system in which the family and the Bourgeois Society find their completion and their security. He was early impressed, as we have seen, with the beautiful unity of the ancient Greek commonwealths. And the first and last idea which governs his representations of the modern

State is that of the Greek commonwealth enlarged as it was from a sun to a solar system. The family feeling and the individual interest are in the modern State let go, accented, intensified to their uttermost power; and it is out of and because of this immense orbit of its elements that the modern State has its 'enormous strength and depth.' It is the typical mind, the very essence of reason, whose completeness is directly as the completeness of each of its terms or sides or factors; and secure in the logical confidence that feeling and self-consciousness, the more they attain their fulness, must return the more certainly to their place in the reasonable system which is their very nature. As ultimate power, the State maintains on one side the attitude of an external necessity towards the spheres of private life, of the family, and of the economic world. It may intervene by force to remove hindrances in the path of the common good, which accident and immaturity may have placed there. But, in its essence, the State is the indwelling and explicit end of these modes of living, and is strong in its union of the universal purpose with the particular interests of mankind. It is, in short, the incarnation of the general or Real Will. . . . True patriotism is the every-day habit of looking on the commonwealth as our substantive purpose and the foundation of our lives." [37]

"The State, as thus conceived," says Mr. Bosanquet in another place, "is not merely the political fabric. . . . It includes the entire hierarchy of institutions by which life is determined, from the family

[37] *The Philosophical Theory of the State*, p. 280.

to the trade, and from the trade to the Church and the University. It includes all of them, not as the mere collection of the growths of the country, but as the structure which gives life and meaning to the political whole, while receiving from it mutual adjustment, and therefore expansion and a more liberal air. . . . It follows that the State, in this sense, is above all things, not a number of persons, but a working conception of life. It is the conception by the guidance of which every living member of the commonwealth is enabled to perform his function, as Plato has taught us." [38]

Or to quote Hegel himself: "The State is the reality of the ethical idea, the reality of the substantial Will, the absolute end in itself, in which liberty attains its highest Right, which has supreme dominion over its members, whose highest duty it is to be members of the State. The State is Mind existing in the world and realizing itself in the world as conscious of itself, while in nature it only realizes itself as sleeping Mind. The State is the divine Will, as present Mind unfolding itself into the real and organic form of the world." [39]

In other words, the State is the highest expression of the absolute Being, it is God, become conscious of Himself in it and in man. And this is what Mr. Bosanquet means when he uses such expressions as that the philosophical theory of the State puts Man in his proper place. It makes him God.

This philosophy is a product of the private study

[38] *The Philosophical Theory of the State*, p. 150.
[39] *Grundlinien der Philosophie des Rechts*, § 257 ff.

and not of the market-place. It flatters the pride of the highly cultivated professor, who is naturally pleased at being told that his thought is evolving deity, and it furnishes very ingenious and far-fetched explanations of all things in heaven and on earth, but it is too remote from ordinary experience ever to become popular or generally accepted. Common sense absolutely refuses to admit that our every thought, word, and deed, are the thought, word, and deed of the all holy God. We know too much about the jobbery, injustice, violence, and selfish aims of States and politicians, ever to be able to believe that in the State we have "the very essence of reason," the embodiment of freedom, and the highest incarnation of infinite Mind. The wonder is that stuff of this sort has exercised, and still does exercise, so powerful an influence on minds otherwise acute and well-balanced. For that it does so cannot be denied. Especially is this true of the leaders of what is called scientific socialism. As Mr. Kirkup, in his *History of Socialism,* says: "Marx and Lassalle were both trained in the school of Hegel, and naturally applied to the problems of society the Hegelian theory of development." [40] In Hegelianism we see the explanation of Marx's constant and contemptuous allusions to the bourgeois political economy, and to bourgeois society. Mr. Belfort Bax, one of the most thoroughgoing and intelligent of English socialists, draws much of his inspiration from the same source. Part of Hegel's influence is doubtless due to the fact that his doctrine of development fits in with, and serves to

[40] *Op. cit.*, p. 294.

complete, the doctrines of evolution. In many recent writers on sociology, belonging both to the mechanical and to the idealist school, we see a tendency to fuse the two philosophies into one in spite of their radical opposition to each other. Thus, while Mr. Bosanquet thinks it important to observe that the mechanical theory of society has not been productive hitherto of much success in the science of sociology, yet he praises its effort after harmony and precision, while he affirms that the general conception of a "continuity between human relations and the laws of the cosmic order is thoroughly in the spirit of Plato and betokens a scientific enthusiasm worthy to be the parent of great things."[41] From the other side we see in the pages of such writers as Mr. Giddings and Mr. Lester F. Ward a disposition to stress the importance of mind in sociological explanations. In the meanwhile practical socialists make use of the doctrines of both schools of sociology for their own purposes. Sometimes, indeed, sociologists make the application desired by socialists themselves. Thus Mr. Lester F. Ward writes in his book *Applied Sociology:* "From this subjective side the whole upward movement of society has been in the direction of acquiring freedom. If we look over the history of this movement, we shall see that it exhibits three somewhat distinct stages, which may be called in their historical order national freedom, political freedom, and social freedom. The first and prime requisite during the early efforts at nation forming, as set forth in the tenth chapter of

[41] *The Philosophical Theory of the State*, p. 20.

Pure Sociology, following upon conquest and subjugation, was the consolidation of the amalgamating group into a national unit capable of withstanding the encroachments and attacks of other outside groups. . . . The salient features of such an organization are extreme inequality, caste, slavery, and stern military domination. . . . But individual liberty is at its minimum. The conquered race, which always far outnumbers all the other elements, is chiefly in bondage, and the struggle for political freedom begins. Ultimately, as the history of the world shows, this is in large measure attained. . . . So all-important did this issue seem that throughout the eighteenth century and down to near our own time it was confidently believed that, with the overthrow of political oppression and the attainment of political freedom, the world would enter upon the great millennium of universal prosperity, well-being, and happiness. But this was far from being the case. As sages predicted, events have proved that there remains another step to be taken. Another stage must be reached before any considerable degree of the hopes that were entertained can be realized. This stage is that of *social freedom.* The world is to-day in the throes of this third struggle. Military and royal oppression have been overthrown. Slavery, serfdom, feudalism, have disappeared. The power of the nobility and the priesthood has been broken. The civilized world is democratic, no matter by what name its governments are called. The people rule themselves by their sovereign votes. And yet, never in the history of the world was there manifested

greater unrest or greater dissatisfaction with the state of things. National freedom and political freedom have been achieved. Social freedom remains to be achieved. . . . The forces that prevent social freedom are hidden and universally diffused through the social fabric. They are largely economic forces; they give rise to questions so recondite and obscure that the clearest thinkers differ as to their solution. . . . The only science that can deal with them is sociology. Their study and solution belong to applied sociology." [42]

Philosophical doctrines of evolution and development form the ground of the conviction which is frequently expressed by socialists, with almost religious fervor, that the present order of society is bound to give place to a higher and better. The following is a sober expression of the conviction by Marx: "The working classes know that in order to work out their own emancipation — and with it that higher form of life which the present form of society irresistibly makes for by its own economic development — they, the working classes, have to pass through long struggles, a whole series of historical processes, by means of which men and circumstances will be completely transformed. They have no ideals to realize, they have only to set at liberty the elements of the new society which have already been developed in the womb of the collapsing bourgeois society." [43] Professor Karl Pearson writes: "Socialism arises from the recognition (1) that the sole aim of man-

[42] *Applied Sociology*, pp. 26–28 (1906).

[43] Quoted in E. Bernstein's *Evolutionary Socialism*, p. 204.

kind is happiness in this life, and (2) that the course of evolution, and the struggle of group against group, has produced a strong social instinct in mankind, so that, directly and indirectly, the pleasure of the individual lies in forwarding the prosperity of the society of which he is a member. Corporate Society — the State, not the personified Humanity of Positivism — becomes the center of the Socialist's faith. The polity of the Socialist is thus his morality, and his reasoned morality may, in the old sense of the word, be termed his religion. It is this identity which places Socialism on a different footing to the other political and social movements of to-day. . . . Yes! sympathy with the Past we must have, but war, ceaseless war, with the Past which seeks with its idols to crush the growth of the Present! The right to re-shape itself is the one birthright of humanity, and the 'vested interests' of priest or of class, the sanctity of tradition and of law, will be of less avail in checking human progress than the gossamer in the path of the king of the forest." [44]

The doctrines themselves of evolution and development afford no foundation for this simple faith. Whatever be the aim of the cosmical process, it is admitted that on evolutionist principles we cannot flatter ourselves that it is concerned with man's welfare and happiness. The latest interpreters of the process tell us that it apparently makes for greater efficiency, and for the sake of efficiency the welfare and happiness of the individual must be sacrificed. For Mr. Ramsay Macdonald, the individual citizen is

[44] *Ethic of Freethought*, pp. 319–320.

but "a humble organ in society, seeking peace in service and wealth in sharing." "In fact," he proceeds to say, "disguise it from ourselves as we may, in our so-called practical moments, every conception of what morality is—except neurotic and erotic whims like those of Nietzsche, or antiquated prescientific notions like those of the Charity Organization Society — assumes that the individual is imbedded organically in his social medium, and that, therefore, the individual end can be gained only by promoting the social end; that the individual is primarily a cell in the organism of his Society; that he is not an absolute being, but one who develops best in relation to other beings, and who discovers the true meaning of his Ego only when he has discovered the oneness of Society." [45]

All the indications point to the coming slavery. The deification of the State by the idealists, the reduction of the individual to the condition of a mere cell in the gigantic organism of modern society, show us what kind of régime we are to expect if the new social order is established. The prophecy with which H. Spencer concludes his articles on *The Man versus The State* may prove to be one of the wisest things he ever said: "The function of Liberalism in the past was that of putting a limit to the powers of kings. The function of true Liberalism in the future will be that of putting a limit to the powers of Parliaments."

If Spencer had studied history more closely than he did, he would have discovered that socialism and

[45] *Socialism and Society*, p. 28 (1907).

the coming slavery are but the logical outcome of the Liberalism which he professed. The motto of the dominant Liberalism of fifty years ago was — Liberty, Equality, and Fraternity. It was professed with the fervor of religious conviction by thousands of the most influential politicians and writers of the day. One of the first English Liberals who saw clearly whither the Liberal doctrines were tending was J. Fitzjames Stephen, subsequently made a Judge of the High Court. Long meditation, his experience as legal member of council in India, and his sound common sense enabled him to see the fallacies of the Liberalism in which he had been bred. He clearly exposed them in his book *Liberty, Equality, and Fraternity,* partly written on his way back to England from India in 1872. The publication of the book in the year following was one of the first signs that the old Liberalism was dead, and that new ideals were coming into view. A passage from that book will show clearly the connection between Liberalism and Socialism. Sir J. Fitzjames Stephen writes: "The only manner in which the famous Republican device can be rendered at once fully intelligible and quite consistent is by explaining Liberty to mean Democracy. The establishment of a Democratic government which proposes to recognize the universal brotherhood of mankind by an equal distribution of property, is as definite a scheme as it is possible to imagine, and when the motto is used in real earnest and not as a piece of meretricious brag, this is what it does mean. When so used the words 'or death' should be added to the motto to give it perfect com-

pleteness. Put together and interpreted in the manner stated, these five words constitute a complete political system, describing with quite sufficient distinctness for all practical purposes the nature of the political constitution to be established, the objects to which it is to be directed, and the penalty under which its commands are to be obeyed. It is a system which embodies in its most intense form all the bitterness and resentment which can possibly be supposed to be stored up in the hearts of the most disappointed, envious, and ferociously revengeful members of the human race against those whom they regard as their oppressors. It is the poor saying to the rich, 'We are masters now by the establishment of liberty, which means democracy, and as all men are brothers, entitled to share and share alike in the common stock, we will make you disgorge or we will put you to death.' It is needless to say more about this doctrine than that those who are attracted by the Republican motto would do well to ask themselves whether they understand by it anything short of this; and, if so, where and on what principle they draw the line." [46]

It required keen insight in a Liberal to see the truth so clearly forty years ago; it is so evident now that even the blind may see it.

I have endeavored in these articles to give a faithful and objective account of the main systems of sociology which are now in vogue. The natural conclusion of the account which I have given is, I think, that there must be another system which avoids the

[46] *Op. cit.*, p. 198.

extremes both of mechanism and of idealism. Man is neither a machine, nor is he God, much less an evolving god; he is a free creature of God, composed of body and soul; there is both a spiritual and a material element in his nature. He is a rational being, and his chief activities are, or should be, under the guidance of reason. Among man's other activities, one of the chief is that by which societies or states are formed. Such societies are natural as is that of the family, but the process by which they are formed does not on that account cease to be rational and free. There must then be a rational doctrine of the constitution of States, just as there is a rational doctrine of the conduct of private life. The science of sociology is a normative not a physical science. It deals not with physical and inexorable laws of brute matter, nor with those of evolving deity, but with the moral laws of the free human will. This rational doctrine of sociology we possess in detail in the numberless treatises of Natural Law, and its broad outlines were traced authoritatively by Leo XIII. in his encyclical on the *Christian Constitution of States,* Nov. 1, 1885. It were much to be desired that we had in good readable English a text-book of sociology on Catholic lines. It would compare most favorably with the class of works that we have had under review. Its sound common sense would recommend it to all reasonable men. It would show that the Catholic Church has no idea and no desire to return to the feudalism or to the absolute monarchy of the past. We recognize that a new age requires new measures, new institutions. As Leo XIII said in

the encyclical alluded to above: "Our eyes are not closed to the spirit of the times. We repudiate not the assured and useful improvements of our age, but devoutly wish affairs of State to take a safer course than they are now taking, and to rest on a more firm foundation without injury to the true freedom of the people; for the best parent and guardian amongst men is truth. *The truth shall make you free.* (John viii. 32)."

XIII

ENGLISH SOCIALISM AND RELIGION

Socialism is no longer a merely academic question in England; it is already with us, and those who are wise in the signs of the times tell us that it has come to stay. In accents of triumph or of apprehension, according as their sympathies are with it or against it, they assure us that in the near future Socialism will exert a powerful, if not a dominant, influence on the government of England. Under these circumstances it behoves us all to study this new factor in English life, and to settle what our own relation to it should be. It is being discussed, defended, and criticized in a thousand halls and on a thousand platforms. Its economic and political bearings are being made clear. But it has an ethical and religious side as well, and especially from this point of view it merits the careful attention of Catholics. We differ without prejudice to our faith on political and economic questions, but we wish to be at one on matters touching Catholic faith and practice.

Nor can the question of English Socialism be settled summarily and offhand. No one who knows anything of the condition of the poor in our large cities can refrain from sympathizing with the noble object of raising the condition of the poor which

English Socialists profess. Some of the means which they propose for this object are above reproach. Some of their accredited writers speak with appreciation and gratitude of what the Catholic Church has done for the poor in the past. They fully acknowledge the noble part she played in the abolition of slavery, in preaching the essential equality and brotherhood of all men, and in gradually raising the condition of the serf. They confess that history shows that the Middle Ages, when the Church was all-powerful, were the golden era of the workingman; and that individualism and capitalistic exploitation of the poor came in with the Protestant reformation. English Socialists for the most part seem anxious to dissociate themselves from their forerunners. They have no sympathy with the Communistic Utopias of the early Socialists, nor with the violent remedies of those who lived a generation ago. Not without reason was Socialism in the past largely identified in men's minds with anarchism and atheism, but modern English Socialists seem generally anxious to persuade the public that their system is something quite different. Thus Mr. Blatchford says: "Another charge against Socialists is that they are Atheists, whose aim is to destroy all religion and all morality. This is not true. It is true that some Socialists are Agnostics and some are Atheists. But Atheism is no more a part of Socialism than it is a part of Toryism, or of Radicalism, or of Liberalism. Many prominent Socialists are Christians, not a few are clergymen. . . . Socialism does not touch religion at any point. It deals with laws, and with industrial and

political government."[1] Another Socialist writer says: "The grossest misconceptions of Socialism amongst large masses of the people still prevail. To the minds of many, even in these supposed enlightened days, the Socialist is a robber, an idle vagabond, who is seeking to steal from the thrifty their hard-earned store, or to take from the rich their rightly inherited wealth. To some others Socialism is the negation of God and of religion. It would destroy the sacred ties of marriage, institute free love, give license to immorality, pillage the churches, and put to flight the anointed servants of the Most High. Another misconception of Socialism is that which associates it with anarchy. Use the word Socialism in the hearing of these people and visions of bombs and dynamite, cruel assassinations and horrid explosions, maimed and mangled limbs and tortured bodies appear before their terrified eyes. Equally uninformed are those individuals who think that Socialism means an equal division amongst its inhabitants of the world's wealth; or that it involves the destruction of private property. Socialism means none of these things. Not one of these is a part of the Socialist program."[2]

Individual Socialists may, indeed, have fads of their own, but the root principle of Socialism in which they all agree is, says Mr. Blatchford, this: "That the country, and all the machinery of production in the country, shall belong to the whole people (the nation), and shall be used by the people and for

1 *Britain for the British*, p. 77 (1902).
2 *The Woman Socialist*, by E. Snowden, p. 2 (1907).

the people." [3] The reign of Collectivism, then, to be brought about gradually, without violence, and without injustice, is the aim of English Socialism. Mr. Belfort Bax, however, admits that "the attempt to limit the term Socialism within the four walls of an economic definition is, in the long run, futile," although he maintains that the formula of Collectivism contains all that is "of faith" in Socialism. It is notorious that Mr. Blatchford, who was quoted above as saying that Socialism does not touch religion at any point, nevertheless found that Christianity stood in his way, and so he attacked Christianity. Other Socialists, too, generally find themselves compelled to consider the relation of Socialism to Christianity. They are aware that the official attitude of the chief Christian bodies is against them, but they stoutly maintain that the doctrine of Christ Himself and of the Primitive Church was not only not antagonistic, but was positively favorable, to Socialism.

For example, Mr. Blatchford says: "Christ's teaching is often said to be Socialistic. It is not Socialistic but it is Communistic, and Communism is the most advanced form of the policy generally known as Socialism." [4] Mr. H. G. Wells says: "There is first the assertion, which effectually bars a great number of people from further inquiry into Socialist teaching, that Socialism is contrary to Christianity. I would urge that this is the absolute inversion of the truth. Christianity involves, I am convinced, a practical Socialism if it is honestly carried

[3] *Britain for the British*, p. 84.
[4] *Britain for the British*, p. 78.

out. This is not only my conviction, but the reader, if he is a Nonconformist, can find it set out at length by Dr. Clifford in a Fabian tract, 'Socialism and the Teaching of Christ'; and, if a Churchman, by the Rev. Stewart D. Headlam in another, 'Christian Socialism.' It is said that a good Catholic of the Roman communion cannot also be a Socialist. Even this very general opinion may not be correct. I believe the papal prohibition was aimed entirely at a specific form of Socialism, the Socialism of Marx, Engels, and Bebel, which is, I must admit, unfortunately strongly anti-Christian in tone, as is the Socialism of the British Social Democratic Federation to this day." [5]

The Rev. S. D. Headlam writes: "There is no excuse for the Socialists and Social Reformers if, on account of the iniquities of the bishops and the follies of the patron-appointed clergy, they refuse to capture the Church, whose principles are all for Socialism; there is no excuse on the other hand, for the bishops and clergy if they allow the patrons and the plutocrats to make them false to the ideals which they were ordained and consecrated to maintain; above all, there is no excuse for Churchmen and Socialists if they refuse to co-operate with all men of good will, whether they call themselves Churchmen or Socialists, or whether they are merely members of the great Common People, in bringing about such Socialist legislation as is possible during the next seven years. The message of the Church to all these is: 'Sirs, ye are brethren; why do ye wrong one to

[5] *The Grand Magazine*, December, 1907, p. 701.

another?'"[6] Mr. Keir Hardie asserts: "It would be an easy task to show that Communism, the final goal of Socialism, is a form of social economy very closely akin to the principles set forth in the Sermon on the Mount. . . . For seven hundred years, says one authority, almost all the Fathers of the Church considered Communism the most perfect and most Christian form of social organization, and it was only after Christianity, from being the despised and persecuted creed of the poor, had become the official religion of the State, that opinion on this point began to undergo a change. Even then it was not until the thirteenth century that the Church came out into the open as a defender of property. . . . When the old civilizations were putrefying, the still small voice of Jesus the Communist stole over the earth like a soft refreshing breeze carrying healing wherever it went."[7]

Obviously there is a question here which needs an answer, an obscurity which needs clearing up. May a Christian and a Catholic, who values his religion and wishes to preserve it, be also a Socialist? And what attitude should he adopt towards this new form of Socialism which is predominant in England and which has strongly influenced the Socialist movement throughout the world?

Most English Socialists seem anxious to persuade us that their system is not anti-religious. Before studying what Catholic doctrine or the teaching of the Catholic Church may have to say on this point,

[6] *The Socialist's Church*, p. 84 (1907).
[7] *From Serfdom to Socialism* (1907).

it will be of advantage to know on what grounds it is maintained that this form of Socialism is not hostile to religion or Christianity. On the motion of Mr. J. R. MacDonald, M.P., the Hull Conference, 1908, declared: "That the attempt that has been made to make the labor movement appear to be antagonistic to religion is a deliberate perversion of the truth, and made for mean partizan purposes. It welcomes men and women of all religious beliefs, as it is a political movement dealing with state affairs, not religious beliefs." This sounds very reassuring, but before concluding from such a declaration that we may remain loyal Catholics and yet give our support to the English Labor Party, which on the same occasion declared in favor of Socialism, we should do well to inquire what Mr. Macdonald understands by religion. When explaining his motion to the Conference he said that "religion was the conscious relationship between the finite and the infinite," and of this Socialism took no cognizance whatever. To the Catholic, however, religion means much more than the conscious relationship between the finite and the infinite. The Catholic religion has much to say about our duties to God, but it also teaches that we have duties towards our neighbor as well, duties of justice, charity, and many other virtues. It has much to tell us about the rights and obligations of property, and, because it is deeply interested in the religious education of the people, it takes up a determined attitude on the question of the secularization of the schools. With his restricted view as to what religion implies, Mr. Macdonald could boldly propose his motion, but

a sincere Catholic, who knows what Catholicism is, would hardly be convinced by Mr. Macdonald's argument.

A declaration signed by a hundred ministers of various religious denominations was published in the papers at the beginning of 1908. These Christian ministers went further than Mr. Macdonald. They asserted that "the central teaching of Socialism is a matter of economics, and may therefore be advocated by all men, whether they be Christians or unbelievers; yet (they said) we feel as ministers of the Christian faith that this economic doctrine is in perfect harmony with our faith, and we believe that its advocacy is sanctioned and indeed required of us by the implications of our religion." Before we allow this solemn declaration to have much weight with us, it will be well to consider the views of the signatories as to what Christianity is. One of them, Mr. Campbell, of the City Temple, and a prominent advocate of the New Theology, says in a recent publication of his: "We cannot too strongly insist that the work of Christianity is to realize the kingdom of God on earth and nothing else. Christianity has not, and never has had, any other divine commission."

The Catholic holds on the contrary that the kingdom of God can never be realized in earth, and that the Christian Church received the divine commission to prepare her children for the life to come in heaven. A Catholic, therefore, will not be greatly influenced by Mr. Campbell's opinion that Christianity is compatible with Socialism. Their views as to what

Christianity is and what is its mission in the world are too divergent.

Nor is the instructed Catholic likely to be much influenced by the Rev. Dr. J. Clifford, who has written a very unconvincing tract for the Fabian Society on "Socialism and the Teaching of Christ."

Another signatory, the Rev. S. D. Headlam, is an Anglican clergyman who succeeds in combining Socialism with Christianity, but only at the expense of much that has hitherto been deemed essential to it by both Anglicans and Catholics. As a specimen of what Mr. Headlam has thrown overboard we will quote what he says about the Bible. He writes: "If the return to religion is to mean a great return to the Church, then the common people must be plainly and frankly told that the Bible is not the infallible Word of God; that the religion and morality which that interesting literature records were tentative and relative; that many horrible and foolish things are recorded in it with approval which it would be un-Christian for us to approve." [8]

Plainly the Catholic's idea of what is Christian and what un-Christian will differ much from Mr. Headlam's.

Mr. Keir Hardie has written a chapter on Socialism and Christianity in his recent book entitled *From Serfdom to Socialism*. The late chairman of the Independent Labor Party is not indeed a theologian, but as he merely professes to use what he has found in Socialist authorities on the subject, it will be worth while to quote what he says. "Christ's de-

[8] *The Socialist's Church*, p. 31.

nunciations of wealth," he writes, "are only equaled by the fierceness of the diatribes which he leveled against the Pharisees. . . . Almost without exception the early Christian Fathers proclaimed that inasmuch as nature had provided all things in common, it was sinful robbery for one man to own more than another, especially if that other was in want. The man who gathered much whilst others had not enough, was a murderer. The poor had a right to their share of everything there was, which is different from the charity so common nowadays. If a man inherited wealth he was, if not a robber himself, but the recipient of stolen goods, since no accumulation of wealth could be come by honestly. To those who said that the idleness of the poor was the cause of their poverty, St. Chrysostom replied that the rich too were idlers living on their plunder. . . . My purpose in writing this chapter will have been served if I have succeeded in showing that the Socialist who denounces rent and interest as robbery, and who seeks the abolition of the system which legalizes such, is in the true line of apostolic succession with the pre-Christian era prophets, with the divine Founder of Christianity, and with those who for the first seven hundred years of the Christian faith maintained even to the death the unsullied right of their religious faith to be regarded as the Gospel of the poor." It is unutterably sad to think of the bad passions and hatred of the Church which writing of this sort is likely to kindle among the poor and ignorant. There is an element of truth in it, but it is mixed with an intolerable amount of misrepresentation.

Unfortunately such writing is becoming very common. Christ, of course, never condemned riches or rich men as such, though he did teach that it is difficult but not impossible for a rich man to enter the Kingdom of Heaven. St. John Chrysostom and some other Fathers of the fourth century said some strong things in their sermons about the rich of their day, but they did not deny the right of private property nor does their teaching countenance Socialism. Mr. Keir Hardie's claim to be in the apostolic succession on account of his doctrine would have earned him a place among the heretics about whom the early Fathers write. St. Augustine, the greatest of all the Latin Fathers, in his work *On Heresies* mentions among others the "Apostolici" who, he says, "most arrogantly call themselves by this name because they do not receive into their communion those who live in marriage and possess property. But," adds the holy Doctor, not without a touch of humor, "these people are heretics because they separate themselves from the Church and assert that there is no hope of salvation for such as have what they themselves have not."

We have seen that Socialists quite commonly assert that Our Lord was a Communist if He was not a Socialist of the English type, and that the Fathers of the Christian Church preached Socialism. Mr. Keir Hardie quotes authority for saying that all the Fathers of the Church considered Communism the most perfect form of social organization, and that it was only when Christianity ceased to be the despised religion of the poor and the persecuted in order to

become the official religion of the State that opinion on this point began to undergo a change. He asserts, indeed, that the Church did not become the avowed defender of property before the thirteenth century. And all this, he says, "incidentally shows how little modern churchgoers know of the history of their own religion when they charge Socialism with being anti-Christian."[9] Is this a true account of the matter or is it a mere travesty of historical fact? It is, of course, obvious to any one who reads the Gospels that the sympathies of Our Lord were with the poor. He chose for Himself a life of poverty, He sought His apostles and disciples among the poor, He indicated the fact that the Gospel was being preached to the poor as a sign of His Messiasship, He taught that it was very difficult for the rich to enter the Kingdom of God, He invited chosen souls to embrace poverty voluntarily as a counsel of perfection, but He did not condemn riches in themselves as the Socialists assert that He did.

The most cursory reading of the context of those passages in the Gospels which are quoted to prove that Jesus Christ condemned riches, shows that he did nothing of the kind. He said indeed: "Woe to you that are rich: for you have your consolation. Woe to you that are filled: for you shall hunger. Woe to you that now laugh: for you shall mourn and weep. Woe to you when men shall bless you: for according to these things did their fathers to the false prophets." But if Our Lord condemned riches in this passage, he equally condemned the taking of a

[9] *From Serfdom to Socialism*, p. 42.

good meal and laughter. It is obvious that not riches in themselves are here condemned, but those rich people who put their trust, happiness, and consolation in their wealth, and neglect the Kingdom of God. Still less does the story of the rich young man favor Socialism. "What good shall I do," he asked, "that I may have life everlasting?" "If thou wilt enter into life, keep the commandments," answered Jesus. "All these I have kept from my youth, what is yet wanting to me?" again asked the other. Then Jesus looked upon him, and loved him and said: "If thou wilt be perfect, go sell what thou hast and give to the poor, and thou shalt have treasure in heaven: and come follow Me." It is obvious from this that the actual renouncing of wealth was not considered by Our Lord as one of the commandments the keeping of which is necessary for eternal life. He invited a chosen soul to leave his wealth and follow Him more closely with a view to obtaining the perfection of charity. In other words, as the Church has always taught, the voluntary renunciation of wealth in order to imitate Jesus Christ more closely, is one of the counsels of perfection to which those who are called may aspire, but it is not necessary for salvation. The Communism, which for a short time was practised in the early Church, was voluntary, as is clear from St. Peter's words to Ananias. In all ages there have always been, as there are to-day, many thousands of men and women who follow the counsel of Our Lord and practise voluntary poverty in the Catholic Church.

Nor did the Fathers of the Church to whom Mr.

Keir Hardie alludes teach anything different from this. They laid great stress indeed on the duty of almsgiving, they declared that the poor had a right to alms, but by this they meant a right arising from the title of charity. They sometimes accused the rich of defrauding the poor, and of injustice; sins that many rich men in all ages and countries have been guilty of, but not necessarily infecting riches as such. It is possible to get rich without committing injustice, though it be true that injustice is the cause of many men being rich. St. John Chrysostom and those half-dozen Fathers of the fourth century whose strong language is quoted by Socialists in this connection did not condemn riches in themselves or deny the right of private property. This is clear from what St. John Chrysostom says, for example, in his second Homily to the people of Antioch. We there read: "It is worth while to inquire why the Apostle writing to Timothy did not say: Charge the rich of this world not to be rich, charge them to become poor, charge them to give up their possessions; but he said to them: Charge the rich of this world not to be high-minded. He knew that pride is the root and prop of riches: and if a man know how to live with moderation such a one has no great affection for them. . . . Besides he knew that riches are not forbidden if their owner uses them for his necessities. For, as I said, wine is not an evil thing but drunkenness is; so wealth is not a bad thing but avarice is. A miser is one thing, a wealthy man another. . . . Besides, Paul was not accustomed to command all things to all men, but he accommodated himself to the weak-

ness of his hearers as did Christ Himself. For to the rich man who came up to Him and asked about life eternal Christ did not say at once: Go, sell all that thou hast; but omitting this, He instructed him concerning the other commandments. Then after the rich man had given Him an opening by saying: "What is yet wanting to me? not even then did He simply tell him to sell all that he had, but He said: If thou wilt be perfect sell what thou hast: I leave this to your free will, you may choose it or not, I impose on you no strict obligation." [10]

Similar passages could be quoted from St. Basil, St. Ambrose, and from the other Fathers of the early Church whose isolated oratorical utterances the Socialists so grossly misrepresent. The constant teaching of the Catholic Church with regard to wealth is explained at length by Clement of Alexandria, one of the most learned of the Fathers who lived at the end of the second century. He wrote a treatise on the question *Who that is rich may be saved.* With a view to explaining the Christian doctrine about riches, he quotes and annotates at length the Gospel story about the rich young man. He gives the passage from the Gospels in full, and then among other comments has the following: "Jesus does not blame him for not fulfilling all the commandments of the law, nay, rather, He loves and cherishes him in that he had strenuously put in practice what he had been taught; but for all that He declares him imperfect with reference to life eternal, in that he had not done what belongs to perfection . . . 'sell what thou hast.'

[10] *Migne* 49, col. 39, n. 5.

What does this mean? He certainly does not bid him throw away his wealth and give up his money as some understand it in the obvious sense; but He bids him remove from his heart the vain esteem for wealth, the unbridled lust and greed of it, the anxious cares and tribulations of the world, which choke the seed of life. . . . For it is a necessary consequence that he who is in want of the necessaries of life is broken in spirit and distracted with anxiety while he strives to procure a livelihood anyhow and anywhere. How much better is it that he should possess moderate wealth so as not to be in want himself and so as to be able to help others in necessity. For if nobody has anything what mutual help can there be among men? Would not that be in open contradiction with many beautiful points of Our Lord's teaching? Make friends of the mammon of iniquity, etc. . . . Lay up treasure in heaven. . . . How could one feed the hungry, give drink to the thirsty, clothe the naked, take the stranger in (which he must do to avoid hell fire, and the exterior darkness), if he is himself without means. Christ Himself was hospitably received by Zacchaeus and by Matthew, who were rich publicans. And He does not bid them give up their wealth, but says: 'This day is salvation come to this house in that he, too, is a son of Abraham.' He so praises the use of money that He commands almsdeeds, the giving of drink to the thirsty, food to the hungry, the clothing of the naked, and hospitality to the stranger. But then since these duties cannot be fulfilled without money, if He bade us renounce it, Our Lord would command us at the same time to

give and not to give, than which nothing can be more foolish. So that wealth which contributes to our neighbor's assistance is not to be given up. . . . Wealth is a means; if you use it rightly it is an aid to virtue; if you use it wrongly it is an occasion of sin. Since, then, wealth is neither good nor bad in itself, and may be possessed without fault, it must not be condemned. . . . Let no one then destroy riches and wealth, but rather let him root out the affections and cares which prevent them being used virtuously; so that becoming good and honest he may also use wealth honestly and well. When, therefore, we are bidden to renounce wealth and to sell what we possess, this is to be understood of renouncing the inordinate affections and cares concerning earthly possessions. . . . So that we must not understand what is said about the rich entering with difficulty the kingdom of heaven in a wrong, bald, and carnal sense; but more spiritually. For though what be said, still salvation does not consist in externals, whether they be abundant or not, great or little, of high repute or obscure, esteemed or otherwise; but salvation consists in the virtues of the soul, in faith, hope, charity, brotherly love, wisdom, meekness, modesty, truth; of these virtues salvation is the reward." [11]

We must then conclude that the doctrine of Christ and of the Christian Church lends no support to Socialism even of the mild English type, and that Catholicism and Socialism are incompatible with one another. The more keen-sighted of the Socialists see

[11] *Quis dives salvetur*, cc. 9–18.

this quite plainly, and while some of them ignore the fact or strive to conceal it for strategical reasons, others are quite plain-spoken on the point. Among the latter is Mr. Belfort Bax, who writes thus: "In face of the active campaign of the Roman Catholic Church among peasants and workmen in many parts of the Continent of Europe, as well as in some of the States of North America, the notion of maintaining that religion is a purely private matter, and that Socialism has no concern with it, if it be a pretense, is a dishonest farce, and if it be no pretense, must mean treachery to the party. It were surely a much better policy, while always insisting on the avoidance of barren, theological controversies or the unnecessary irritation of smoldering religious sentiment, to candidly admit that Socialism, like every other system of society, has its own *Weltanschauung,* or conception of the universe, and that, rash as it would undoubtedly be at present to attempt to confine it within the four corners of any formula or set of formulæ — it is, nevertheless, if nothing else, incompatible with the supernaturalism and with much of the ethics of the old religious systems. It is, of course, perfectly true that a man may favor any particular 'plank' of the immediate party program and vote for them while remaining a strict Catholic or Calvinist or Jew or Moslem; and the present writer would be the last in the world to choke off such extraneous aid — aid which is not merely desirable or advantageous, but, in the present position of affairs at least, is in most countries absolutely essential to the formation of a Parliamentary Socialist party. All that is sought

to be urged here merely points to a distinction between such 'proselytes of the gate' and those who are definitely recognized as members of the Socialist party. The profession of dogmatic theological beliefs by the latter can but mean one of two things — either deliberate deception, or such a hopeless nebulosity of mind as to suggest that the persons in question are extremely undesirable members of an organization where sincerity, outspokenness of conviction, and clearness of intention, are of the first importance." [12]

May we hope that all Catholics will bear in mind the verse in the Book of Proverbs:

"A net is spread in vain before the eyes of them that have wings."

[12] *Essays in Socialism*, p. 99 (1907).

XIV

EUGENICS AND MORAL THEOLOGY

Eugenics, the science of good breeding, is the youngest of all the sciences, but she already displays considerable vigor and she has a very high estimate of her own importance for the welfare of mankind. The late Sir Francis Galton put Eugenics on a scientific basis and gave it its name. In 1904 he founded the Francis Galton Laboratory in the University of London for the study of agencies under social control that may improve or impair the racial qualities of future generations either physically or mentally. By his will he left a considerable portion of his wealth to this institution. The Eugenics Education Society was founded in London in the year 1908 with the object of rousing public opinion to a sense of the importance of the subject, and spreading knowledge, and providing teaching on it among the people. This Society publishes a quarterly Review.

Eugenics builds on the facts of heredity. Together with a tendency to slight variation, offspring in general display the qualities of their parents. This fact has, of course, been known for ages, and breeders of animals and growers of plants have taken advantage of it to improve their stock. Man is subject to the phenomena of heredity as well as animals and plants, and eugenists propose to make use of the old and new

knowledge which modern science has gained and will continue to gain on the facts of heredity in order to improve the breed of men. The conviction which has been gaining ground for some years past that at present in England the worse stocks are increasing faster than the better stocks of the population gives actuality and urgency to the proposal. It is pointed out that in former times pestilence, famine, war, and generally harder conditions of life eliminated the weaker and the unfit. Nowadays medical science and the amenities of modern civilization preserve many who would not have survived in ruder circumstances. Weaklings in body and mind not only survive in greater numbers under modern conditions, but they multiply more rapidly than the sounder stocks. The number of the insane, neurotic, feeble-minded, sickly, unhealthy, degenerates, and undesirables is steadily increasing, and threatens to poison the life of the nation. Many causes seem to be working in the same direction. The higher and better classes marry later, as a rule have fewer children, and many of the more enterprising emigrate to other lands, where there is a better opening for their energy and ability. The poor are more improvident. They marry earlier, have larger families, the mother often works in the factory and cannot suckle her babies or look after her children; even when they are healthy themselves they frequently intermarry with vitiated stocks. The strain of modern competition and the unhealthy environment furnished by our large centers of industry tell with deadly effect on our laboring population, the great bulk of the nation. The daily constant

grind wears down the strongest constitutions, and destroys their physique and nerve power. Probably more disastrous than all other causes is the general absence of religion with its controlling, soothing, and vivifying influence. After all, the worst enemies of bodily, mental, and spiritual health are neither inherited defect, nor insanitary environment, nor the grinding wear and tear of competitive industry; but drink, gluttony, lust, pride, avarice, and the other unbridled passions of poor human nature. At any rate the Christian religion exercises a very powerful controlling influence over these passions, and helps a man to keep them in subjection to reason. Religion, too, soothes and recreates as nothing else can do; it calms the mind, and tends to prevent useless fretting and discontent. The general decay of religion robs men of all these salutary influences, and nothing can be found to take its place. The effect of these and other causes on the physical and mental health of the nation is nothing less than appalling. For confirmation of this we need not go to alarmists. It will be sufficient to quote the sober and deliberate judgments of one or two scientists of standing on the crisis which has arisen in the national life. Professor J. A. Thomson writes: "We have to face a more difficult problem when we consider the multiplication of the relatively unfit. It is, we suppose, true that these have now a better chance to survive and multiply than at any other epoch in the history of our race. Especially perhaps in Britain do the weeds tend to increase more rapidly than the flowers. It is impossible to ignore the seriousness of the outlook.

If, as Professor Karl Pearson points out, 25 per cent. of the married couples in Britain produce 50 per cent. of the next generation, how much depends on the character of that 25 per cent. From the most diverse regions we have reports of the alarming increase of what not even the most optimistic can regard as other than undesirables. In a fine climate and in a period of cheap food and high wages, the ratio of defectives — including deaf and dumb, lunatics, epileptics, paralytics, crippled and deformed, debilitated and infirm — is said to have increased from 5.4 per 1,000 above 15 years in 1874 to 11.6 in 1896. Particular statistics, such as these, may be open to criticisms, but there are scores of similar statistics from almost every civilized country and there is no escape from the general result. As Emerson said, we are breeding men with too much guano in their composition." [1]

In his lecture on *The scope and importance to the State of the Science of National Eugenics* [1909], Professor K. Pearson says: "A clean body, a sound if slow mind, a vigorous and healthy stock, a numerous progeny, these factors were largely representative of the typical Englishman of the past; and we see to-day that one and all these characteristics can be defended on scientific grounds; they are the essentials of an imperial race. . . . We reach the state of affairs which Mr. Sydney Webb tells us is demonstrable in another intellectual circle in this country, an almost childless population with no inheritance of its ability. And against this we have to set the maxi-

[1] *Heredity*, p. 528.

mum fertility which is reached by the degenerate stocks! . . . The progress of the race inevitably demands a dominant fertility in the fitter stocks. If that principle be not recognized as axiomatic by the mentally and bodily fit themselves, if the statesman does not accept it as a guide in social legislation, then the race will degenerate, until, sinking into barbarism, it may rise again through the toilsome stages of purification by crude natural selection. I am not pessimistic in this attitude. I know that the English people has been aroused to self-consciousness more than once in its history, and I believe that now it can be brought to realize that safety lies in a conscious race-culture. . . . On the one hand I do not raise an alarmist picture of our coming decadence, nor on the other hand would I leave you without insisting that there is grave occasion for earnest thought." [2]

It is obvious that Eugenics is a subject of interest to Moral Theology, and that the two sciences touch at several points. We shall not then be justly accused of meddling in what does not concern us, if we inquire into the attitude which theology should adopt towards the newcomer. We have no wish to provoke another conflict between science and religion, but, as the eugenists allow, this is a matter which specially concerns the moralist and the theologian. Indeed if any conflict takes place, it will not be the theologian who has provoked it. The theologian has reason to complain that some eugenists have gone out of their way to deliver a gratuitous assault on what is dear

[2] *Op. cit.*, pp. 41–45.

to theology. Thus, Professor W. Bateson, in his inaugural lecture on *The Methods and Scope of Genetics,* 23rd October, 1908, said: "The blundering cruelty we call criminal justice will stand forth divested of natural sanction, a relic of the ferocious inventions of the savage. Well may such justice be portrayed as blind. Who shall say whether it is crime or punishment which has wrought the greater suffering in the world? We may live to know that to the keen satirical vision of Sam Butler on the pleasant mountains of Erewhon there was revealed a dispensation, not kinder only, but wiser than the terrific code which Moses delivered from the flames of Sinai."[3] *The Eugenics Review,* November, 1910, p. 169, had the following: "A considerable proportion of criminals are known to be feeble-minded, and a considerably larger proportion of criminals are driven into crime by hereditary tendencies; possibly the rest are made by a defective education. Individual responsibility is thus in great part mythical; the self-protective interest of society would be better served if those possessing definite criminal tendencies were subjected to kindly but permanent detention, and in this manner prevented from bringing into the world others like themselves." Professor K. Pearson writes: "Our highly-developed human sympathy will no longer allow us to watch the State purify itself by aid of crude natural selection. We see pain and suffering only to relieve it, without inquiry as to the moral character of the sufferer or as to his national or racial value. And this is right — no man is respon-

[3] *Loc. cit.*, p. 35.

sible for his own being; and nature and nurture, over which he had no control, have made him the being he is, good or evil." [4]

The doctrine that the thief and the murderer are not responsible for their crimes, that in committing them they were not free but necessarily determined by physical forces just like the earthquake, is a most comfortable doctrine for the criminal classes, and one which they are not slow to apply in practice, as the statistics of increasing crime show. Only, the doctrine is not scientific, nor does it make for the improvement of the race. We protest then, in the name of science and morals, against necessitarianism being made the basis of Eugenics.

Sir Francis Galton claimed that as Eugenics strengthens the sense of social duty in so many important particulars, it should find a welcome home in every tolerant religion. He looked forward to the time when it would be accepted as a quasi-religion.[5] Professor K. Pearson complains that he has not noticed that this first principle of duty to the race, of national morality, has been fully insisted on by our ethical writers.[6] But he, too, looks forward to the time when Eugenics will have become "a creed of action." He quotes with approval words of Sir F. Galton: "Eugenic belief extends the function of philanthropy to future generations, it renders its actions more pervading than hitherto, by dealing with families and societies in their entirety, and it en-

[4] *The Scope of National Eugenics*, p. 37.
[5] *Essays in Eugenics*, pp. 68, 108.
[6] *The Scope of National Eugenics*, p. 41.

forces the importance of the marriage covenant by directing serious attention to the probable quality of the future offspring. . . . In brief, Eugenics is a virile creed, full of hopefulness, and appealing to many of the noblest feelings of our nature." [7]

In reply to this we may say that the scope and object of Eugenics are truly admirable, and that they already form an important element in the Christian religion. Christianity has always insisted on the virtue of Charity, which obliges us to love not only God, but our neighbor as ourselves. Catholic theologians with one accord have followed St. Augustine and St. Thomas Aquinas in interpreting "our neighbor" as comprising all rational creatures who are capable of happiness with God, all who are loved by Him. Charity embraces the whole, mighty family of God, our Father, future generations, as well as the present and past. The object of Eugenics, then, the physical and mental good and improvement of the race of mankind, is part of the object of Charity, the chief and the noblest of the Christian virtues. If the spiritual good of mankind be added to the list of objects, the end of Eugenics would be identical with that for which the Catholic Church exists and works. Eugenics in this sense is already a dogma of faith and a creed of action for every true Christian. However, theology teaches that true Charity is well-ordered. It looks with suspicion on eloquent professions of love for mankind in general, especially when they come from men whose words and actions are full of hatred and malice for the particular specimens of

[7] *Op. cit.*, p. 45.

mankind that they come across in everyday life. So, in the same way, although theology must approve of general love for future generations, still it cannot allow the certain good of the present generation to be sacrificed for the sake of the problematical benefit of future generations. This may explain partially why Christian ethics has not stressed our duty of love for the men of the future. They do not as yet exist, they are not as yet in misery and want, perhaps they never will be. Our obligation of loving them will be satisfied by wishing them well, and not doing anything to injure them. The best way to avoid injuring them will be to show charity to the specimens of humanity who are already in misery and want, and to abstain carefully from injuring them. While then theology is quite at one with Eugenics as to the end to be aimed at, it very cautiously scrutinizes the means proposed for the attainment of that end.

The most drastic remedy for the danger of degeneration that threatens the nation has been proposed by Dr. R. R. Rentoul, of Liverpool. In 1903 he published a book on the *Proposed Sterilization of certain Mental and Physical Degenerates*, and a second, enlarged edition, appeared in 1906 under the title — *Race Culture: or Race Suicide?* His aim was effectually to prevent degenerates from propagating their kind, and for this purpose he advocated the surgical operations of vasectomy and fallectomy. "The operation consists in excising and ligaturing the divided ends of, in the male, the vasa deferentia, or spermatic cords, and in the female, the fallopian tubes."[8]

[8] *Race Culture, or Race Suicide?* p. 144.

Voluntary sterilization was to be permitted in the case of women with deformed pelvis, or diseased wombs, in the case of those who suffered from insanity when pregnant or after childbirth, and in the case of both men and women who suffered from any incurable diseases of the lungs or other chief organ. Compulsory sterilization was to be applied to "all idiots, imbeciles, feeble-minded, epileptics, lunatics, deaf-mutes, defective and backward children, habitual inebriates, habitual vagrants, public prostitutes, many sexual perverts, and markedly neurotic persons. To all these we *must* say: You may marry if you wish — we do not advise you; you may have sexual intercourse — we cannot prevent you; you are jerry empire builders, and a grave danger to the nation, and so we cannot and will not permit you to hand down your degeneracy to inoffensive and harmless children, or to add to the sum-total of human parasites, who, by loading the already overtaxed taxpayer, prevents him from marrying, or drives him to restrict the increase of his family." [9] It is obvious that there would be grave danger of making mistakes, especially with regard to backward children, and doing irreparable injury to those who otherwise might have become very healthy stock. To prevent such mistakes and possible abuse, Dr. Rentoul suggests that: "No person should perform the operation of sterilization for the purpose of preventing the begetting of degenerates, without the official permission of the Lunacy Commissioners of England, Scotland, or Ireland; and the Commissioners should inquire into the his-

[9] *Race Culture, or Race Suicide?* p. 145.

tory of the person to be operated upon, and take any other steps they consider necessary. No person should operate except those specially appointed by the Commissioners;" besides other recommendations.[10]

This proposal has been discussed from the moral point of view in several of the theological magazines of Europe and America. One or two American writers have maintained the lawfulness of the operation, but all the rest that I have seen are against it. There is some conflict of expert opinion about the physical effects and consequences of the operation, but even if we admit Dr. Rentoul's contention that if properly performed no external deformity or other evil effects of any sort follow from it, yet physiologically and morally the operation is a serious mutilation of the human body in a most important organ. Such a mutilation can only be allowed when it is necessary in order to save the whole body, or by public authority in punishment for crime, as theologians commonly teach with St. Thomas. We must, then, according to the common opinion, pronounce against the lawfulness of the Rentoul operation. Of course there would be a further difficulty from the moral point of view against the marriage or the use of marriage by males who had undergone the operation. Morally they would be eunuchs, whom Sixtus V. declared to be incapable of marrying or of using marital rights.[11] With regard to women who had

[10] *Op. cit.*, p. 146.

[11] Constitution, *Cum frequenter*, 22 June, 1587.

undergone fallectomy, the question of impotence is not so clear. *Adhuc sub judice lis est.*

We must point out a flaw in an argument which Dr. Rentoul frequently employs in support of his proposal. "We cannot and will not permit you," he says, "to hand down your degeneracy to inoffensive and harmless children." On p. 2 he writes: "My simple contention is . . . that no person, sane or insane, has the right to punish an innocent child by inflicting it with any bodily or mental disease, so that it either dies prematurely or is a mental or physical cripple. Such punishing is murder — murder of life, murder of health, murder of success, and murder of everything worth having." On p. 9: "We shall have compassion upon you and the coming race. We shall prevent you from begetting more degenerates. We shall form ourselves into a real society for *the prevention* of cruelty to children."

It is obvious that there is a fallacy here. The alternative does not lie between the same person begetting healthy and unhealthy children. There is no question of preserving future children that are destined to be born from bodily or mental taint. The alternative is clearly between existence and non-existence of the children. The sterilized have no children; if they had not been sterilized they might have had children, and some of these might have inherited the parental taint. But to exist even with a taint is better than not to exist at all. Materialists and those who confine themselves to the consideration of the present life may dispute or deny this proposition,

but for a Christian who believes that at best this life is only a preparation for a future eternity of happiness, the proposition cannot admit of doubt. Not only are degenerates as capable as the most robust and healthy of attaining the true end of human existence, but in many respects they are more fitted to attain it. The calendar of Christian saints would be much shorter, nay, it would be robbed of some of its most glorious names, if all the degenerates were to be removed from it. But even if we confine our attention to the present life, is it so certain that it would be better for being deprived of its degenerates? Is it not true that the cripple and the otherwise unfit are often the sunny spot in the life of the family? Often enough their very weakness and unfitness call forth all the capacities for the purest and sweetest affection in those around them. If we had not the unfit, we should miss some of the noblest and most beautiful traits that human nature can show. No, although bouncing health is a great blessing, and I by no means desire the production or multiplication of the degenerate, still, if we take a wider view of life, we shall have to confess that both this world and the next would be the poorer if it were not for some degenerates.

The moralist would find less difficulty in admitting the power of the State to inflict sterilization as a penalty for crime. In Catholic times, a still more severe punishment was the legal penalty for rape in England, as Bracton informs us. "Quod quidem crimen si convincatur, sequitur poena, scilicet amissio membrorum ut sit membrum pro membro, quia

virgo cum corrumpitur, membrum amittit, et ideo corruptor puniatur in eo in quo deliquit, oculos igitur amittat propter aspectum decoris, quo virginem concupivit, amittat et testiculos, qui calorem stupri induxerunt." [12]

Professor Schmitt, in the Innsbruck *Zeitschrift* for January, 1911, will not countenance the infliction of vasectomy as a punishment for crime. Mutilation is not in keeping with modern humanitarian ideas, and the painlessness of the operation makes it unfit to be used as a deterrent. However this may be, there does not seem to be any grave moral objection to such a use of vasectomy or fallectomy, if the State so decreed.

Dr. Rentoul's proposal has met with a certain amount of support from the non-theological world. Boards of Guardians have discussed it, but the more cautious and authoritative among eugenists themselves tell us that it would not be safe to practise such methods for preventing degeneracy in the present state of knowledge on the subject. According to a writer in the *Times*, March 2, 1911, such measures "have never commended themselves to the public conscience. In America they have been tried and found wanting. The same end is attained by lifelong detention." Professor J. A. Thomson writes of it in this strain: "Some have taken up an extreme *laissez-faire* position, which, as human society is constituted, is quite untenable. . . . Others, going to the opposite extreme, have advocated what may be called surgical methods for both sexes to a degree that is

[12] *De Legibus Angliæ*, lib. iii., tract. 2, c. 28.

more than spartan." [13] The same writer protests on the following page against those who "do not hesitate to suggest methods of surgical elimination to an extent that is almost grotesque."

We may then conclude that neither morality nor science approves of the sterilization of the degenerate in order to prevent them from propagating their kind. We are glad to associate ourselves with Dr. Rentoul in his uncompromising condemnation of medical abortion when used for the same purpose, as some medical authorities have proposed.[14]

Apart from the employment of surgical operations, such as have been mentioned, as far as I can see moral theology would have no insuperable difficulty in allowing other means which have been proposed by eugenists to improve the race and to remedy national degeneration. Many of them it would cordially approve. The two sciences are quite at one in their condemnation of race suicide by the artificial restriction of the number of children. If the teachings of moral theology on this subject and on matters connected with it were more insisted on and practised, there would perhaps be no need for other measures. Moral theology condemns not only race suicide, but the causes which have made it a national danger in our time. It condemns the cursed greed of gold which is at the root of the increasing difficulty in getting an honest livelihood for oneself and family. Business methods tend to oust justice and charity. It condemns the immoderate pursuit of pleasure and amusement which makes the modern woman unwill-

[13] *Heredity*, p. 529. [14] *Op. cit.*, p. 170.

ing to submit to the duties of motherhood. It condemns pride which leads people to live in a style above their means, and vie with their neighbors in foolish display and ostentation. It condemns the luxurious and artificial lives often led by the wealthy classes, which in all probability are the cause of their diminished fertility. In other words, moral theology insists on the duties imposed on men by the Christian religion, the decay of which is the prolific cause of all our troubles.

In his Huxley Lecture, October 29, 1901, Sir Francis Galton suggested certain positive means for the improvement of the race. Young men and women might be examined eugenically, and diplomas might be granted to the healthy and the fit. Dowries might be allowed them to enable them to marry early and rear a numerous family. They should have healthy homes, honors should be bestowed on those who provide the nation with a healthy stock, and public opinion should be roused and guided so that it will condemn the marriage of the unfit and approve the marriage of the fit.

The moral theologian would have no professional objection to any of these proposals, whatever he might think of their practicability and efficacy. His science discourages the marriage of the unfit. If a man is incapable of looking after and providing for a family, he should not marry. If he does marry, he undertakes obligations which he cannot fulfil. Disease or crime detected in one of the parties to a promise of marriage gives the other party the right to break off the engagement. If one of the parties is

aware that he labors under some hidden disease or defect which in the event of marriage will be hurtful to the other party, he is bound to make that defect known to the other before marriage and give him the opportunity of retiring from the engagement if he chooses. People laboring under infectious diseases are, of course, to be dissuaded from marrying while they are in that state. But as ecclesiastical law stands at present, such persons are not absolutely prohibited from marrying one who knows of the disease and who is willing to take the risks. The Church has always considered that those who wish to marry and have not voluntarily renounced it, have a strict right to do so, and that neither she nor the State can interfere with that right except for the greatest reason. Thus she allowed lepers to marry even with the probability that if children were born they would inherit the parental taint. Theologians teach that the rule laid down for lepers may be applied to other infectious diseases. It is better, they say, to be born a leper, than not to be born at all.[15] Without doubt, a chief reason for this teaching is the grave moral danger to souls which would be the consequence of enforced celibacy. After all, we must guard against not only bodily disease, but the far more terrible diseases of the soul. It is natural that the Christian theologian and the materialist should not be able to look at such questions in quite the same light. They differ radically in their estimate of values.

Many eugenists advocate the segregation or life-long detention of degenerates. According to the

[15] Wernz, *Jus. decret.*, iv., n. 253 ff.

Poor Law Number of the *Eugenics Review* for November, 1910: "In respect to any representative of undesirable stock, the principle states that the community will keep him alive, will give him sympathy, protection and kindly treatment, but that the interest of the future demands that he shall be denied the privilege of parenthood. The community may, if it likes, provide palaces for its paupers, feeble-minded, criminals and alcoholics, to induce them to forego their desire to be progenitors of their kind through all future generations, in complete assurance that it will be well repaid in a hundred years. A cheaper alternative method is enforced kindly detention. The right of the subject may be anything but the right to curse the future" (p. 171).

The moralist would find no difficulty in these proposals except perhaps in the last. Enforced detention or segregation would mean a virtual prohibition of marriage and its use to the degenerate. As was said above, this would be contrary to modern ecclesiastical law, but if it were shown to be for the common good, the Church might change her discipline on the point. She has made impediments of marriage for the common physical good of her children in the past, and she would not be slow in the future to sanction necessary or useful means to ensure the health of the community. Her past legislation affords several instructive parallels. Thus, in the old canon law, many crimes and transgressions were punished by forbidding the criminal to marry. Pirhing enumerates seven such crimes: becoming godparent of one's own child in baptism, murder of a priest, solemn and pub-

lic penance while it lasted, knowingly and sacrilegiously marrying a nun, wife murder, abduction of another's bride, incest with a wife's relations within the second degree.[16] So that if it were shown to be for the common good that certain habitual criminals should be prevented from propagating their kind, I do not think that the Church would stand in the way of such an enactment.

What was formerly done with the approval of the Church in the case of lepers might again be done to all who labor under infectious diseases. They were segregated and inclosed in lazar-houses. Although the old canon law enjoined on the bishop the duty of exhorting the consort of a leper to follow him and minister to him with conjugal affection, yet there was no strict obligation to do so, and the ordinance was subsequently modified. Pirhing expressly notes that the custom of segregation was approved by the canon law, which allowed such lepers to have their own Church and priest.[17]

We must not be in too great a hurry to introduce restrictive legislation of the kind suggested. Eugenists and students of heredity are by no means agreed as to whether acquired characters and diseases in general are transmitted to offspring by their parents. Much observation and study will be required before legislation can be proposed with safety. In the *Herbert Spencer Lecture*, delivered before the University of Oxford, June 5, 1907, Sir Francis Galton uttered a warning against too great precipitation

[16] Pirhing, *Jus canon.*, lib. iv., tit. 16, n. 11.
[17] *Ubi supra*, n. 4.

in this matter. He said: "Enough is already known to those who have studied the question to leave no doubt in their minds about the general results, but not enough is quantitatively known to justify legislation or other action except in extreme cases. Continued studies will be required for some time to come, and the pace must not be hurried."

XV

CIVIL LAW AND CONSCIENCE

Some time ago a paragraph appeared in the daily papers describing how a conscientious superintendent of police had taken a summons out against himself, and had been fined five shillings for riding his bicycle without a light. A clergyman, he said, had spoken to him on the subject, and this had brought the offense home to him. *Punch* recorded the incident, and took the opportunity to show what such views about the obligation of the law might be expected to lead to, if they became general. In one corner of the page, master Bob, with a woe-begone expression, was presenting a birch-rod to his mother, and confessing that he had been at the jam again. Below, a cabby was taking out a summons against himself for charging a fare sixpence too much. Opposite was a learned judge closing proceedings in his court by fining himself £20 and costs for betting in a place within the meaning of the Act; and in the middle, stood an automatic conscience clearer, armed with iron fists, worked on the penny-in-the-slot principle, for inflicting summary punishment on delinquents for minor offenses.

No doubt the honest superintendent's conscience, or that of his clergyman, was somewhat strict, for

whatever may be the obligation of the law, it would seem to be certain that it does not bind delinquents to execute its penalties on themselves. But how does civil law bind the conscience? What obligation, if any, does English civil law impose on the conscience? It may be worth while to examine this question from the point of view of Moral Theology.

There can be no doubt that the civil lawgiver can bind the consciences of his subjects by his laws. This is the plain teaching of St. Paul in Romans xiii. 1–5:

> Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God. Therefore he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation. For princes are not a terror to the good work, but to the evil. Wilt thou then not be afraid of the power? Do that which is good: and thou shalt have praise from the same. For he is God's minister to thee, for good. But if thou do that which is evil, fear: for he beareth not the sword in vain. For he is God's minister: an avenger to execute wrath upon him that doth evil. Wherefore be subject of necessity, not only for wrath, but also for conscience' sake.

According to Christian teaching, then, the civil ruler can bind the consciences of his subjects, so that they offend God if they disobey a strict precept imposed by him. His power to do this does not depend on his having correct theological views, for St. Paul prescribes obedience to the Roman emperors, who knew nothing at that time about Christianity.

But though we must concede that the civil ruler has the power to bind the consciences of his subjects un-

der sin, it does not follow that all his laws do in fact bind under sin. For one who has authority to command may use all his power or not, as circumstances require, and as he judges fit. It is often better for a father to signify a desire that a son should do what he wants, rather than to impose on him a rigorous command. What is wanted will be gained quite as surely, and more sweetly, in the former manner than in the latter. It is not desirable that a father should always use his full authority when he commands his children. And in like manner, any superior whose office it is to direct the actions of his subjects to the common good, and to whom God grants the authority necessary for this purpose, will often gain his end quite as surely, and more sweetly, if he refrains from using his full power on every occasion. And as the end in view is the chief thing to be considered, if the end can be gained by sweet and easy means, why should not these be preferred? A superior can indeed impose a precept which will bind the conscience under sin, but he need not necessarily do so, if the end can be obtained by simply expressing a desire; in other words, as a superior can impose a command or refrain from doing so, as he judges best, so the obligation which the superior's command imposes on his subjects may be greater or less, as he judges best. As the existence of the obligation depends on his will, so the quality also of the obligation depends on his will. This of course does not imply that the superior's will is the only source of obligation, or that it can change the nature of things. If an obligation not to commit murder has already been imposed by a

higher authority, a subordinate authority cannot impose a binding precept to commit murder. A lower superior can only use the power that has been granted him. He effects nothing if he attempts to transgress the limits of his authority, whether those limits be set by a higher superior from whom he derives his authority, or by the nature of things. So that a human lawgiver cannot impose just what laws he pleases. If he attempts to command what God forbids, his command cannot bind the conscience; he may indeed, by using his superior might, punish those who refuse to obey, but he cannot make their disobedience wrong. It will be a right action approved by God and good men. "We ought to obey God rather than men."

However, if the common good should require it, a human lawgiver may prohibit what God prohibits, and command what God commands, and enforce these laws by human sanctions. Thus He forbids theft, and commands parents to support their children. And such laws certainly bind the conscience, so that a subject who violates them, not only sins against the law of God, but also against the law of his country. He makes himself liable to punishment both from God and men.

All, I think, are agreed upon this, that human laws which are declaratory of the divine or natural laws bind the consciences of subjects. So that civil laws forbidding murder, theft, and other crimes; selling poisons without due precautions, selling beer to those who have already had too much, disseminating indecent literature, bind the conscience under sin.

And similarly positive precepts which command what is already obligatory by the Divine or natural law also bind the conscience under sin. So that a father is bound to support his wife and children according to his ability, not only because the Divine and natural law commands it, but also because the municipal law enforces it.

The same, too, as all I think are agreed, must be said of those civil laws which determine the natural law, where of itself it is indeterminate. For the natural law is concerned rather with general precepts than with particular circumstances and cases. Often it suggests and persuades rather than prescribes. It indicates what is desirable rather than imposes a definite obligation. In such cases it is the province of the positive law to step in and, for the common good, determine what was before indeterminate, that there may be a definite rule of action, that subjects may not be left in perilous uncertainty about their rights and duties, so that there may not be continual lawsuits. When it has done so, the rule laid down will be a guide, not only for the external conduct, but also for the conscience. And so the Prescription Act, the Married Women's Property Act, Infants' Relief Act, and other laws of the like nature form rules of conscience as well as of law.

The law of nature suggests that if a man has been in peaceful possession of property for a long time, and in good faith, thinking it to be his own, he should not be disturbed, even though it afterwards appears that another had a better title. The natural law does not indeed of itself in such a case transfer the

ownership of the property, it only suggests that it would be for the common good, that it would make owners of property more watchful of their rights, that it would lessen the number of troublesome law-suits, if long and peaceable possession, with good faith, gave a title to property. And so the positive law steps in, and enacts that prescription shall be a good title to property. Positive law determines and defines the conditions of prescription, and its provisions hold good for the conscience, as well as for the external forum. And the same is true of other positive laws, which for the common good determine and define the law of nature. In like manner the sentence of the judge, in a doubtful case of conflicting rights, provides a safe rule for conscience, and obliges the contending parties.

In all these cases the obligation does not arise purely and simply from the positive law, there is a root of obligation already existing which the positive law declares or determines. But such cases are far from exhausting the whole subject-matter of positive law. There remains a very large field of more or less indifferent actions, where man's liberty is restrained neither by the Divine nor by the natural law. As far as God's law or the law of nature is concerned, very many actions are neither prescribed nor prohibited; they may be done or left undone, done in this way or in that, and whichever course be chosen a man's conscience will be free, as far as the Divine or natural law is concerned. And yet it is often well that the law should interfere, with prudence indeed and moderation, in matters that are of themselves in-

different. Thus with regard to work in factories, the conditions of labor might, absolutely speaking, be left to be arranged by the humanity of the employers, or by mutual agreement between employers and employed; but experience has shown that it is desirable for the civil authority to step in, and so we have the Factory Acts. They forbid working overtime, or under a certain age, prescribe certain precautions to be taken for the sake of health, they limit in many ways the natural liberty of masters and men.

We have also positive laws relating to the regulation of mines, enactments concerning the raising of revenue, Elementary Education Acts, laws forbidding certain contracts, as for example, in restraint of trade, and so forth. How do such laws as these affect the conscience? Is it a sin to violate them, just as it is a sin to violate those which declare or determine the Divine or natural law? And here of course we suppose that there is no obligation in conscience arising from some other source than the positive law. For our purpose we eliminate other possible sources of obligation, and merely consider the positive law. Thus, it may be, that the owner of a coal-mine knows that there is fire-damp in his mine, and that it is exceedingly dangerous to work in it. Then, of course, both he and the men are bound to take such precautions as will enable the work to be carried on with comparative safety. The hours of labor, too, are restricted in a sense by the natural law, which prescribes a reasonable care of life and health. But for the purpose of our inquiry, we disregard such cases as these; we suppose cases in which there is no obli-

gation arising from the natural law, and we wish to ascertain what, if any, obligation is imposed by positive law. If a factory-master, knowing that his hands did not object, were to work half an hour overtime, when there is a brisk demand for his goods, and that in spite of, and in the teeth of the law, would he commit a sin, or what obligation would he violate?

The lawgiver has the power to bind the conscience even in such indifferent matters as these, as all admit and as we have already seen. But, as we have seen, he need not always use his power to the full extent. He may indeed intend to bind his subjects to obey his laws even in indifferent matters under pain of sin, and assign a sanction or penalty to be inflicted on those who break the law. Or, without intending to impose a strict obligation under pain of sin, he may be satisfied that he can secure substantial obedience to his laws, by merely assigning a penalty to be endured for violations of the law. The former are called by divines moral laws, the latter are called penal laws. A moral law imposes an obligation under sin in conscience, and usually assigns a penalty for breaches of it; a penal law only imposes the obligation of submitting to the penalty when lawfully exacted. A breach of a moral law is a sin, a breach of a penal law is not a sin, if one be prepared to pay the penalty if levied. The question as to whether positive municipal laws are moral laws or penal laws is a celebrated one.

Martin Azpilcueta, the celebrated Doctor of Navarre, and on that account usually styled Navarrus, held, in the sixteenth century, that the positive laws

of secular princes did not bind the conscience. "Ancient custom," he says, "seems to have interpreted in this sense secular laws especially, concerning whose transgression it has not been usual to disturb the consciences of learned or unlearned, penitents or confessors, or men of any condition, order, or sex, except when the Divine, natural, revealed, or canon law was also at the same time broken; and this because infidel lawgivers care nothing about eternal punishment, and there are very few Christian secular princes who say that it is their intention in making laws, while imposing a temporal penalty, to bind also to eternal punishment, when the Divine or natural law does not so bind." [1]

Although a few other theologians held the same view, the common opinion was against it. In England, Anglican divines, as was to be expected, were strongly on the side of the stricter opinion. Jeremy Taylor admits indeed that "this question is so dubious and unresolved, that Cajetan and Henricus de Gandavo did suppose it fit to be determined by the Pope *in cathedra*, as thinking it otherwise to be indeterminable." [2] However, he not only maintains that positive civil laws bind under sin, but that to say that a law does not bind under sin is a contradiction. He does not seem to have grasped the idea of a penal law in the theological sense. Sanderson, in his able book, *De obligatione conscientiæ*, explains at considerable length what is meant by penal laws; but while admitting that they may exist, he does not say that

[1] *Manuale*, c. 23, n. 55.
[2] *Ductor dubit.* Bk. III., c. 1, r. 1, n. 2.

they actually do exist in England, and he maintains the general proposition that positive municipal laws bind the conscience under sin. This continued to be the common opinion in England down to our own day, in spite of the great weight of Sir William Blackstone's authority in favor of the milder view. This eminent lawyer gives his opinion on the question so clearly and well, that I am tempted to give it in his own words:

It is true, it hath been holden, and very justly, by the principal of our ethical writers, that human laws are binding upon men's consciences. But if that were the only or most forcible obligation, the good only would regard the laws, and the bad would set them at defiance. And, true as this principle is, it must still be understood with some restriction. It holds, I apprehend, as to *rights;* and that when the law has determined the field to belong to Titius, it is matter of conscience no longer to withhold or to invade it. So also in regard to *natural duties,* and such offenses as are *mala in se:* here we are bound in conscience, because we are bound by superior laws, before those human laws were in being, to perform the one, and abstain from the other. But in relation to those laws which enjoin only *positive duties,* and forbid only such things as are not *mala in se,* but *mala prohibita* merely, without any intermixture of moral guilt, annexing a penalty to non-compliance, here I apprehend conscience is no farther concerned, than by directing a submission to the penalty, in case of our breach of those laws: for otherwise the multitude of penal laws in a state would not only be looked upon as an impolitic, but would also be a very wicked thing; if every such law were a snare for the conscience of the subject. But in these cases the alternative is offered to every man; "either abstain from this, or submit to such a penalty;" and his conscience will be clear, whichever side of the

alternative he thinks proper to embrace. Thus, by the statutes for preserving game, a penalty is denounced against every unqualified person that kills a hare, and against every person who possesses a partridge in August. And so, too, by other statutes, pecuniary penalties are inflicted for exercising trades without serving an apprenticeship thereto, for not burying the dead in woolen, for not performing the statute-work on the public roads, and for innumerable other positive misdemeanors. Now these prohibitory laws do not make the transgression a moral offense, or sin: the only obligation in conscience is to submit to the penalty, if levied. It must however be observed, that we are here speaking of laws that are simply and purely penal, where the thing forbidden or enjoined is wholly a matter of indifference, and where the penalty inflicted is an adequate compensation for the civil inconvenience supposed to arise from the offense. But, where disobedience to the law involves in it also any degree of public mischief or private injury, there it falls within our former distinction, and is also an offense against conscience.[3]

It will not be necessary to defend this clear exposition of a very probable opinion concerning the obligation of English positive law, from the not always very intelligent criticism of Blackstone's commentators. Since his time a notable change of view has taken place in the English legal world concerning the nature and obligation of positive law. The school of thought represented by Hobbes, Locke, Bentham, and Austin, seems to have become predominant, and to have succeeded in a large measure in ousting the more orthodox views of Blackstone. And as the obligation of positive law depends rather on him who enforces it, than on the original lawgiver, we will briefly

[3] *Commentaries on the Laws of England*, i., p. 57.

examine the Austinian conception of law, and see how it affects the conscience. Austin's theory of law and of the obligation which it imposes may be gathered from the following extracts from his *Lectures on Jurisprudence:*

Every *law* or *rule* is a *command.* And since the term *command* is the *key* to the sciences of jurisprudence and morals, its meaning should be analyzed with precision. . . . If you express or intimate a wish that I shall do or forbear from some act, and if you will visit me with an evil in case I comply not with your wish, the *expression* or *intimation* of your wish is a *command.* A command is distinguished from other significations of desire, not by the style in which the desire is signified, but by the power and the purpose of the party commanding to inflict an evil or pain in case the desire be disregarded. If you cannot or will not harm me in case I comply not with your wish, the expression of your wish is not a command, although you utter your wish in imperative phrase. If you are able and willing to harm me in case I comply not with your wish, the expression of your wish amounts to a command, although you are prompted by a spirit of courtesy to utter it in the shape of a request. . . .

A command, then, is a signification of desire. But a command is distinguished from other significations of desire by this peculiarity: that the party to whom it is directed is liable to evil from the other, in case he comply not with the desire.

Being liable to evil from you if I comply not with a wish which you signify, I am *bound* or *obliged* by your command, or I lie under a *duty* to obey it. If, in spite of that evil in prospect, I comply not with the wish which you signify, I am said to disobey your command, or to violate the duty which it imposes.

Command and duty are, therefore, correlative terms: the meaning denoted by each being implied or supposed by

the other. . . . Concisely expressed, the meaning of the correlative expressions is this. He who will inflict an evil in case his desire be disregarded, utters a command by expressing or intimating his desire. He who is liable to the evil in case he disregard the desire, is bound or obliged by the command.

The evil which will probably be incurred in case a command be disobeyed or (to use an equivalent expression) in case a duty be broken, is frequently called a *sanction,* or an *enforcement of obedience.* . . . In short, I am determined or inclined to comply with the wish of another, by the fear of disadvantage or evil. I am also determined or inclined to comply with the wish of another, by the hope of advantage or good. But it is only by the chance of incurring *evil,* that I am *bound* or *obliged* to compliance. It is only by conditional *evil,* that duties are *sanctioned* or enforced. It is the power and the purpose of inflicting eventual *evil,* and *not* the power and the purpose of imparting eventual *good,* which gives to the expression of a wish the name of a *command.*[4]

Such are Austin's views on the nature of law, duty, and obligation. They are views which are now commonly held in English legal circles. They are the views which form the basis of the science of jurisprudence as it is now taught at our national universities, explained and enforced in the leading encyclopædias and law books. They are, we believe, utterly false, and in the end subversive of peace and order. As long indeed as the majority in a nation hold the true principles of authority, right and justice, there is every probability that the nation's laws will be conformed to those principles; but if socialism gains over the majority, then there appears no reason why, act-

[4] *Lectures on Jurisprudence,* Vol. I., p. 90.

ing on these principles, the law will not become socialistic, why it will not impose an obligation on those who have, to transfer their belongings to those who have not, and if they do not obey, the law will have its sanctions to compel them. International politics teach us what to expect in domestic affairs. The possessions of the weaker nations are being divided among the stronger, and, politicians tell us, there is sure to be fighting over the spoil. It is:

> The good old rule, the simple plan
> That they should take who have the power
> And they should keep who can.

The whole civilized world has recently been shocked by the application of such principles on a large scale.

If one should be so benighted as to use the old argument that unjust laws are against the law of God, and have no validity, he has already been impatiently and indignantly answered by Austin:

> Now, to say that human laws which conflict with the Divine law are not binding, that is to say, are not laws, is to talk stark nonsense. The most pernicious laws, and therefore those which are most opposed to the will of God, have been and are continually enforced as laws by judicial tribunals. Suppose an act innocuous, or positively beneficial, be prohibited by the sovereign under the penalty of death; if I commit this act, I shall be tried and condemned, and if I object to the sentence, that it is contrary to the law of God, who has commanded that human lawgivers shall not prohibit acts which have no evil consequences, the Court of Justice will demonstrate the inconclusiveness of my reasoning by hanging me up, in pursuance of the law of which I have impugned the validity. An exception, demurrer, or plea founded on the law of God was never

heard in a Court of Justice, from the creation of the world down to the present moment.

But this abuse of language is not merely puerile, it is mischievous. When it is said that a law ought to be disobeyed, what is meant is that we are urged to disobey it by motives more cogent and compulsory than those by which it is itself sanctioned. If the laws of God are certain, the motives which they hold out to disobey any human command which is at variance with them, are paramount to all others. But the laws of God are not always certain. All divines, at least all reasonable divines, admit that no scheme of duties perfectly complete and unambiguous was ever imparted to us by revelation. As an index to the Divine will, utility is obviously insufficient. What appears pernicious to one person may appear beneficial to another. And as for the moral sense, innate practical principles, conscience, they are merely convenient cloaks for ignorance or sinister interest: they mean either that I hate the law to which I object and cannot tell why, or that I hate the law, and that the cause of my hatred is one which I find it incommodious to avow. If I say openly, I hate the law, *ergo*, it is not binding and ought to be disobeyed, no one will listen to me; but by calling my hate, my conscience or my moral sense, I urge the same argument in another and a more plausible form: I seem to assign a reason for my dislike, when in truth I have only given it a sounding and specious name.[5]

One wonders what Austin would have said to the officers of a socialistic government which had just passed a law abolishing private property, when they should come to him to enforce the law, by requiring him to give up the fruits of his labor and thrift. But as a rule ideas work themselves out too slowly to permit of us seeing the spectacle of the real author

[5] *Lectures on Jurisprudence*, i., p. 221.

of anarchy and revolution tasting the fruits of his own principles.

However, we are not concerned with the refutation of Austin's views on jurisprudence. We wish to see how they bear on civil law and conscience. For if they are the views which prevail now in England in legal circles, we may infer that the obligation which those who make and enforce the laws wish to impose upon us, is the obligation of positive law as Austin understood it. But the only obligation of positive law according to Austin, is the chance of incurring the *evil* assigned by the law as a penalty for the breach of it. "It is only by the chance of incurring *evil*, that I am *bound* or *obliged* to compliance. It is only by conditional *evil,* that duties are sanctioned or enforced." "Being liable to evil from you if I comply not with a wish which you signify, I am *bound* or *obliged* by your command, or I lie under a *duty* to obey it."

It is clear that according to these views positive law as such imposes on the conscience no obligation under sin; indeed in Austin's view to say that positive law as such imposes no moral obligation, is merely to enunciate a truism. In other words, positive law, according to the intention of the majority of those who make and enforce it, commands a thing to be done or to be forborne only under pain of submitting to the penalty enjoined in case of disobedience. So that we may safely maintain with Blackstone that British positive laws are not moral laws, but purely penal laws in the theological sense.

Idealism has its representatives, it is true, among

English philosophers. According to this school the only possible source of moral obligation is from within. As one of the chief of its writers, the late Professor T. H. Green says in his book on the *Principles of Political Obligation:* "Morality consists in the disinterested performance of self-imposed duties" (p. 49). And in another place —"Morality and political subjection have a common source. . . . That common source is the rational recognition by certain human beings of a common well-being which is their well-being and which they conceive as their well-being whether at any moment any of them is inclined to it or no, and the embodiment of that recognition in rules by which the inclinations of the individuals are restrained, and a corresponding freedom of action for the attainment of well-being on the whole is secured" (p. 124).

It may be doubted whether this school of writers has much influence on English public or private life. In any case it is clear that there can be no question of sin in the violation of self-imposed rules of conduct.

XVI

SOME QUESTIONS CONCERNING INTENTION

We need not go beyond the words of Our Lord in the Sermon on the Mount (Matt. vi. 22; vii. 17), for a proof of the important bearing of our intention on the morality of our actions. In the sight of God the aim, the intention, with which we perform our actions, is of more importance than what we do. This is a commonplace of theology and of asceticism, and it is admitted by all who profess to guide their conduct by the maxims of the Gospel. But though it be admitted on all hands that the intention is the principal part of our deliberate actions, there is considerable difference of opinion among theologians on several points in the general doctrine of intention. Theologians do not usually discuss these points together, but it may be worth while to consider them together as forming a portion of one body of doctrine, every part of which throws light on every other part. I propose, then, to take St. Thomas principally for my guide, and bring together for the purposes of comparison and mutual illustration a few points in the doctrine of intention.

Intention is nothing more than an efficacious wish or desire of an object; it is a movement of the will

towards an end, with reference to the means which must be taken in order to attain that end.

The ends of our intentions are manifold and various as are human nature and human actions, but there is one which is common to all men, and in regard to which we are not free. Man necessarily desires happiness, and if happiness be taken in the abstract, it forms the object of all our endeavors. The will is attracted only by what seems good; it is moved only by what seems likely to contribute to our well-being; in every action, then, we seek for happiness, and cannot do otherwise. If we found ourselves in presence of an object which was wholly good, we could not but love and desire it; and so when the blessed find themselves face to face with God, the infinite source of all goodness and beauty, they are necessarily ravished with love of Him; they cannot but love Him.

However, as no other object but God is wholly good, and as in this world we cannot see Him face to face, and the attainment of the possession of God is accompanied by labor and difficulty, so while we live on earth, though we necessarily seek happiness, yet we do not seek it necessarily in any one object; in other words, we are free to determine the end of our intentions according to our choice.

If we accept the teaching of St. Thomas, we are under a moral obligation to direct all our actions to the honor and glory of God.[1]

In this sense he interprets the words of St. Paul.[2]

[1] St. Thomas, *Sum.* I.–II., q. 100, a. 10 ad 2.
[2] 1 Cor. x. 31.

However, this must not be understood as imposing on us an obligation to form an actual intention of doing our every action for God. This would be requiring more than man's weakness can bear. It will be sufficient if we refer every action to God virtually. St. Thomas explains his mind very fully and clearly on this point in various places of his works. Thus in *De Caritate,* a. 11, ad 2, he says:

Ad secundum dicendum, quod omnia actu referre in Deum non est possibile in hac vita, sicut non est possibile quod semper de Deo cogitetur, hoc enim pertinet ad perfectionem patriae; sed quod omnia virtute referantur in Deum, hoc pertinet ad perfectionem caritatis ad quam omnes tenentur. Ad cujus evidentiam considerandum est, quod sicut in causis efficientibus virtus primae causae manet in omnibus causis sequentibus, ita etiam intentio principalis finis virtute manet in omnibus finibus secundariis: unde quicumque actu intendit aliquem finem secundarium, virtute intendit finem principalem; sicut medicus dum colligit herbas actu, intendit conficere potionem, nihil fortassis de sanitate cogitans; virtualiter tamen intendit sanitatem propter quam potionem dat. Sic igitur cum aliquis se ipsum ordinat in Deum sicut in finem, in omnibus quæ propter se ipsum facit manet virtute intentio ultimi finis, qui Deus est; unde in omnibus mereri potest, si caritatem habeat. Hoc igitur modo Apostolus præcipit quod omnia in Dei gloriam referantur.

In the next paragraph St. Thomas distinguishes a virtual from an habitual intention of pleasing God:

Ad tertium dicendum, quod aliud est habitualiter referre in Deum, et aliud virtualiter. Habitualiter enim refert in Deum et qui nihil agit, nec aliquid actualiter intendit, ut dormiens; sed virtualiter aliquid referre in Deum, est agentis propter finem ordinantis in Deum. Unde habitu-

aliter referre in Deum, non cadit sub praecepto: sed virtualiter referre omnia in Deum cadit sub praecepto caritatis, cum hoc nihil aliud sit quam habere Deum ultimum finem.

It is then necessary and sufficient, according to St. Thomas, to refer all our actions to God virtually. What he means by *virtually* is clear enough from the passages just quoted, but he explains his meaning more fully and more clearly in other places, especially in his commentary on the Second Book of the Sentences, Dist. xl., q. 1, a. 5. There we read the following passages:

Ad sextum dicendum, quod non sufficit omnino habitualis ordinatio actus in Deum: quia ex hoc quod est in habitu nullus meretur, sed ex hoc quód actu operatur. Nec tamen oportet quod intentio actualis ordinans in finem ultimum sit semper conjuncta cuilibet actioni quae dirigitur in aliquem finem proximum: sed sufficit quod aliquando actualiter omnes illi fines in finem ultimum referantur: sicut fit quando aliquis cogitat se totum ad Dei dilectionem dirigere: tunc enim quidquid ad seipsum ordinat, in Deum ordinatum erit. Et si quæratur quando oporteat actum referre in finem ultimum hoc nihil aliud est quam quaerere quando oportet habitum caritatis exire in actum, quia quandocumque habitus caritatis in actum exit, fit ordinatio totius hominis in finem ultimum, et per consequens omnium eorum quae in ipsum ordinantur ut bona sibi.

Ad tertium dicendum, quod non solum actus caritatis est meritorius, sed etiam actus aliarum virtutum, secundum quod gratia informantur: licet meritorii esse non possint, nisi secundum quod reducuntur in finem caritatis. Non autem oportet quod semper actus in finem illum reducantur: sed sufficit ad efficaciam merendi quod in fines aliarum virtutum actu reducantur: qui enim intendit castitatem servare, etiamsi nihil de caritate cogitet, constat quod meretur, si gratiam habet. Omnis autem actus in

aliquod bonum tendens, nisi inordinate in illud tendat, habet pro fine bonum alicujus virtutis, eo quod virtutes sufficienter perficiunt circa omnia quae possunt esse bona hominis.

It is clear, then, that St. Thomas teaches that it is of obligation to refer all our actions to God, our last end. However, this obligation is sufficiently fulfilled by one who acts from any motive that is not bad; for in thus acting he intends something which he sees to be good, as every human act is either good or bad, according to St. Thomas. But in directing his intention to something that is good, he is necessarily, though only virtually, not actually, directing his intention to God, his last end; for the very notion of moral goodness implies conformity to man's last end.

St. Thomas further teaches that in him who is in the grace of God, in him who fulfils all the obligations which bind him under pain of grave sin, every act that is ethically good is also meritorious of life eternal. For among our other obligations there is the positive precept of charity, by which we are bound at times to think of God, and elicit an act of love towards Him. By this act of charity we have referred ourselves and all our actions to God, and so unless it be recalled by one that is contrary to it, or by mortal sin, which destroys the bond of friendship between God and the soul, it continues to exert its influence on our subsequent actions, and informs them with the spirit of charity. It thus makes them supernatural and meritorious of a crown of glory in heaven.

The precept of charity obliges us to love God with all our heart, mind, and strength, but our condition

here on earth does not permit us to be always engaged in actually thinking of God and forming acts of love towards Him. The limitations of our nature and the necessities of life, as a rule, only permit us to observe this greatest of all commandments by never doing anything directly contrary to it, and by fulfilling it virtually, that is, by virtually directing our every action towards God in the sense explained by St. Thomas. However we are bound at all events occasionally to think of God explicitly, and to give Him the service of our explicit love and affection. This St. Thomas teaches, as we have already seen, and it is certain doctrine, approved and enforced by the Church. Nevertheless, it seems impossible to say when and how often we are bound under pain of sin to form explicit acts of the love of God. St. Thomas [3] teaches that at least when a man begins to have the use of reason he then begins to think about his last end, and that he is then bound under pain of mortal sin to refer his whole being and all his actions to God. If he do this, he thereby obtains the sanctifying grace of God if he was still in original sin; if he fail to do it he commits his first sin, so that one who is still in original sin cannot commit venial sin before he has committed mortal sin.

Although this opinion of St. Thomas has always had its supporters, especially among his followers, yet it does not seem ever to have won the common assent of theologians. The opinion seems not sufficiently grounded in revelation, reason, or experience. At some time, indeed, after coming to the use of reason,

[3] *Sum.* I.–II., q. 89, a. 6.

and after learning his obligations towards God, his Creator and Lord, every man is bound to give himself to the service of God by an act of love; but other theologians think that the particular time when this obligation must be fulfilled under pain of grave sin cannot be so exactly determined as St. Thomas lays down. All are agreed that we must frequently during our lives form explicit acts of the love of God, but it seems impossible to determine more accurately at what intervals this obligation must be fulfilled under pain of sin.

Intimately connected with the obligation of referring our actions to our last end is the question concerning the influence of our intention on the moral quality of our actions. Some early Christian writers misled by a false interpretation of the words of Our Lord in the Sermon on the Mount, taught that the intention with which we perform our actions is everything, the actions themselves are of no moral quality. Thus the unknown author of the *Opus imperfectum* on St. Matthew, generally published with the works of St. Chrysostom, says:

> Ergo servus Dei non potest facere malum; et si videtur tibi aliquando quod male fecit, considera caute ipsum malum ejus, et invenies eum ab intus esse bonum. Nam ex proposito bono, etiam quod videtur malum, bonum est, quia propositum bonum malum opus excusat; malum autem opus bonum propositum non condemnat.[4]

Cassian, too, in his *Collationes* writes:

> Non enim Deus verborum tantum actuumque nostrorum discussor et judex, sed etiam propositi ac destinationis in-

[4] Hom. xix.

spector est. Qui si aliquid causa salutis aeternae ac divinae contemplationis intuitu ab unoquoque vel factum viderit vel promissum, tametsi hominibus durum atque iniquum esse videatur, ille tamen intimam cordis inspiciens pietatem, non verborum sonum, sed votum dijudicat voluntatis, quia finis operis et affectus considerandus est perpetrantis, quo potuerunt quidam, ut supra dictum est, etiam per mendacium justificari, et alii per veritatis assertionem, peccatum perpetuae mortis incurrere.[5]

Peter Lombard had perhaps these and other authors in mind when he wrote in the Second Book of the Sentences:

Sed quaeritur, utrum omnia opera hominis ex effectu et fine sint bona vel mala. Quibusdam ita videtur esse, qui dicunt, omnes actus esse indifferentes, ut nec boni nec mali per se sint; sed ex intentione bona bonus, et ex mala malus sit omnis actus.[6]

As it is clear from these extracts, the doctrine that the end justifies the means had its supporters in very early times among Christian writers; it was indignantly and triumphantly refuted by the great St. Augustine, whom St. Thomas and orthodox teachers in the Church have always followed on this point.

In order to have a clear notion of what influence the intention has on the morality of an action, it may be worth while briefly to summarize St. Thomas's doctrine on the point.

He first of all examines the human act in its totality,[7] and teaches that it derives its moral quality from the object, the end, and the circumstances. The object is that about which the human faculty is en-

[5] *Collat.* xvii., c. 17. [6] *Dist.* xl. [7] *Sum.* I.–II., q. 18.

gaged when the action is produced, or it is that which the faculty produces or does; it is the substance of the action considered in the abstract, and apart from its circumstances. Thus, in the act of theft, the object is the taking away of something which belongs to another, and if this be considered in relation to right reason, it is obvious that it is an act which is contrary to it; or theft is morally wrong because the object of the action is against right reason, which is the rule of human actions.

The end, on which the morality of an action also depends, is the motive of the action, the reason why it is done. It is obvious from what has been said above that the moral quality of an act depends on its motive or on the intention with which it is done; it is bad to steal, it is worse to steal in order to be able to commit adultery, according to the well-worn illustration.

Finally, the circumstances which accompany an action give it its moral quality, as well as the object and the end. It is wrong to steal, but to steal the Church plate, or the pittance on which a poor man depends for the support of himself and his family is worse. To play in the field at the proper time is right, to play in church is wrong. After laying down these principles about the morality of human acts in general, St. Thomas considers in detail the morality of the two chief component parts of a complete and consummated act, the interior act of the will and the exterior act. When a theft is committed, the thief first of all determines to commit the crime, and then sets about its execution. The crime morally consid-

ered is one completed human action, but physically it is composed of many, both interior and exterior acts. The will determines upon the theft, and then sets the external faculties in action to accomplish it. We are chiefly concerned with the interior act of the will.

The will is set in motion by some object or end which it wishes to attain. Thus one may come to know of a case of distress, and natural good feeling prompts the desire to relieve it. The relieving of distress in the case is the object towards which the will tends, and which causes the will to form the intention of giving relief. This object, therefore, is the cause of the action of the will, it is the term from which the action starts, and it is the goal towards which the action is directed. And as all motion is specified by the term to which it is directed, so the motion of the will, which we call intention, receives its moral quality from the object or aim to which it tends. So the intention to relieve distress is an act of virtue, and an intention to do an injury is vicious. In other words, the morality of the intention depends upon the object or end in view.

When the will has formed the intention of relieving the case of distress, the next step is to discover the means. If the means are not at hand, it is necessary to work to obtain them, the work undertaken for so charitable a purpose will be colored by the object for which it is undertaken, and itself become an act of charity. The means are desired for the sake of the end, they become the object of the will because of their connection with the end, they therefore put on

the moral quality of the end. In the same way, if the end be bad, means, though good in themselves, taken with a view to attain such an end, become corrupted and bad. And so to work in order to obtain money to indulge in debauchery is itself wrong and wicked.

And here we touch upon the celebrated question whether a good end justifies wrongful means. In the sphere of politics there is too much reason to suppose that the view that the end does justify the means is largely acted upon by statesmen of all parties and nationalities. Machiavelli, who has given his name to the theory, lays down the principle with the utmost candor:

> A prince, therefore, is not obliged to have all the forementioned good qualities in reality, but it is necessary he have them in appearance; nay, I will be bold to affirm, that having them actually, and employing them upon all occasions, they are extremely prejudicial, whereas having them only in appearance, they turn to better account; it is honorable to seem mild, and merciful, and courteous, and religious, and sincere, and indeed to be so, provided your mind be so rectified and prepared that you can act quite contrary upon occasion. And this must be premised, that a prince, especially if he come but lately to the throne, cannot observe all those things exactly which make men be esteemed virtuous, being oftentimes necessitated for the preservation of his State to do things inhumane, uncharitable, and irreligious; and therefore it is convenient his mind be at his command, and flexible to all the puffs and variations of his fortune: Not forbearing to be good, whilst it is in his choice, but knowing how to be evil when there is a necessity. . . . Let a prince therefore do what he can to preserve his life, and continue his supremacy, the means which he uses shall be thought honorable, and be com-

mended by everybody, because the people are always taken with the appearance, and event of things, and the greatest part of the world consists of the people: those few who are wise, taking place when the multitude has nothing else to rely upon.[8]

More briefly, but perhaps still more to the point, he says in his *Discourses on Livy:*

And this ought to be considered and observed by every man whose office it is to advise for the good of his country; for where the safety of that is in question no other consideration ought to be coincident, as whether the way be just or unjust, merciful or cruel, honorable or dishonorable, but postponing all other respects, you are to do that which shall procure the safety of your country, and preservation of its liberty.[9]

It is by no means an uncommon thing to meet with an almost equally explicit approval of the doctrine that the end justifies the means in the daily press and in modern periodical literature. Such approvals are specially frequent in more or less appreciative accounts of the careers of such men as Bismarck and Rhodes. But Machiavellianism is not confined to politicians, nor of course did unscrupulousness first appear in the days of the crafty Florentine. As we have already seen there are traces of the doctrine that the end justifies the means in several writers of the early ages of the Church.

However, with a few obscure exceptions, theologians have constantly rejected the view. They point out with St. Thomas that an action is not morally good merely because the end or intention is good; it

[8] *The Prince*, c. 18. [9] Book III., c. 41.

must be good in all particulars; *Bonum ex integra causa, malum ex quocumque defectu,* was the axiom applied in the case. And so if a man steals in order to relieve a case of distress, he does wrong though his intention be never so praiseworthy. It is wrong to steal, and it remains wrong though the theft be committed with a good intention, and the otherwise good action of relieving distress is vitiated by the wrongful means employed to do it, for the will to relieve distress by robbery is a vicious will. As the Society of Jesus is constantly being attacked on this point, it may not be out of place to quote the words in which Vasquez, one of its greatest divines, sums up the doctrine which it has always taught:

Ad testimonia auctoris imperfecti in Matthaeum et Cassiani, dicimus, hos Patres excusari non posse ab errore in quem ignoratione lapsi sunt; existimarunt enim opus alioquin natura sua malum reddi posse bonum ex bono fine; intelligere autem videntur, etiamsi ex bono fine non mutetur natura objecti, et aliarum circumstantiarum, ex quibus malitia alias oriretur: et hac ratione defendit Cassianus licitum esse mentiri ob aliquem honestum finem, et necessitatem: quam sententiam late impugnat Augustinus in lib. contra mendacium ad Consentium, praesertim cap. 7, ubi etiam haereticam appellat. Multa etiam congerit contra illam Gratianus 22 q 2, estque manifeste contra Paulum ad Romanos 3, ubi damnat eos, qui dicebant, faciamus mala, ut veniant bona, quorum damnationem dicit esse justam. Recte igitur docet Augustinus omnia opera, quae constat esse peccata, bene fieri non posse, etiamsi fiant ex recta alias intentione, alia vero opera, quae ex se peccata non sunt, recta effici ex recta intentione.[10]

[10] In I.–II. S. Thomæ, Disp. 68, c. 2.

Although a good intention cannot make a bad action good, yet it may sometimes so change the circumstances that the action is no longer forbidden. Thus, to take away a pistol from a would-be homicide in order to prevent him from committing a crime is a good action, while it would not be justifiable without good intention. Some authors, with Vasquez, on the same grounds defend the opinion that one may lawfully intend to kill an unjust assailant of life or limb in self-defense. All admit that it is lawful to kill the assailant in such a case, if this be necessary for self-defense; many theologians, however, with St. Thomas, teach that the object of the intention should be self-defense, and not the killing of one's adversary. For directly to take away human life, even the life of a criminal, is only lawful when done by public authority; it is never permitted, they say, to private individuals. It is, however, lawful to defend oneself, and if in doing this the aggressor is slain, his death must be imputed to him, it was not directly intended. The point is somewhat fine, and perhaps not very practical, but certainly this view seems to be more in harmony with principles admitted by all theologians.

Another point much controverted among theologians is whether the intention can make an external act formally unjust, which without the intention would not be so. Thus theologians discuss the question whether a thief would be bound to compensate another who was accused of the theft committed by him, when the thief foresaw and intended that the other should be accused of the crime. All agree that he would be so bound, if in any way he procured the

accusation of the other. The question concerns the case in which he did nothing to cause the imputation except to commit the crime. Similarly, would a man *in foro conscientiae* and before being condemned to do so by lawful authority, be obliged to make reparation to a neighbor who had been injured by falling into a man-trap, set in a retired corner where no one was likely to go, but with the intention that any one who did go there should be caught? Here it is conceded that there would be no obligation of making restitution for the injury done, if it had not been intended; the question is whether the intention changes the case, and imposes the obligation.

It must be admitted that the intention to do harm to another is sinful, and that it is an internal sin against justice. For a desire or intention of doing evil is of the same species as the external act intended. But the obligation of making restitution does not arise from a merely internal act of injustice, it is created only by loss being effectively caused by the unjust action of another. That unjust action must have of itself the effect of causing harm; the harm must follow from it as from its efficient cause, not as from a mere occasion, otherwise there will be no obligation of making restitution. But the intention cannot give efficacy to an external act which it has not of itself. I may intend ever so much to do something, but unless I take effective means, the thing will never be done. The intention cannot change the objective nature of the means employed, and so it cannot make that an effective cause of injustice, which is not an effective cause without the intention. And so in both

of the examples above, the answer should be in the negative.

Closely connected with this is another question as to whether he is bound to restitution who, in intending to do harm to one, through mistake does harm to another.

Although great names can be quoted for the opinion that there is no obligation of making restitution in such a case on the ground that no formal injury was caused to the person who suffered loss, that the injustice as regards him was involuntary; still, it would seem that this opinion is wrong; the intention does not change the nature of the external act. That act, as a matter of fact, causes harm; the agent has no right to put it; he foresees the harm that will be done; he is therefore bound in justice to abstain from the action, and if he does not do so, he is bound to repair the harm he has wilfully caused. The fact that he intended the injury for another does not weaken the effectiveness of his action, it does not cause it to be harmless, it does not then release him from the obligation of repairing the loss caused; it was sufficient to impose the burden of making restitution if the harm was foreseen. In such circumstances the injury is formal, although not intended as against this particular person; for whenever a man's property is knowingly and unjustly destroyed, a formal injury is committed against him although the injury was intended for another. The thief rarely has any direct intention of injuring the man whose goods he steals; if he could only get the goods without injuring their owner he would in general be perfectly satisfied; he

is very sorry for the inconvenience he causes, he does not desire it, but few would agree that these dispositions prevent the injury which he does the owner by taking his goods from being formal injustice.

XVII

DR. McDONALD'S "PRINCIPLES OF MORAL SCIENCE"

THIS book deserves a welcome as an honest attempt to grapple with the difficulties of moral science. How great those difficulties are is generally recognized, and by none more fully and freely than by those who have tried to overcome them. Modern theories in history and science have directed renewed attention to the fundamental problems of ethics, and it is fitting that readers who are interested in the subject should be able to study the Catholic answer to those problems in the mother tongue. Students of theology, too, will benefit by being able to consult an English author, who goes over the ground rendered so familiar to them by our Latin text-books. There are many such works published in other modern languages, but as yet the English language is singularly deficient in them.

These, however, were not the reasons that induced Dr. McDonald to publish his essay. He tells us in his preface that while it is his main object to explain and defend the traditional system of morals which has been taught for centuries in the Catholic schools, yet he claims to have arrived at some important conclusions which are not to be found elsewhere. "If it

were otherwise," he says, "I should not have thought of writing or publishing."

In the course of teaching moral theology, he noticed a considerable difference between the general principles formulated in the treatises on Human Acts, Laws, and Conscience, and the special conclusions arrived at afterwards when treating of the particular virtues. These special conclusions he regards as the true rules of moral conduct, and as furnishing the material for that wider synthesis which forms the substance of the earlier and fundamental treatises. Hence these special conclusions should furnish a test for the validity and accuracy of the general principles laid down in the treatises on Human Acts, Law, and Conscience.

I quite agree. A general principle of morals which breaks down when applied to particular cases does not deserve to rank as a principle. It makes a pretense of being a rule of conduct, while in practice it furnishes no guide to conduct at all. If, then, the contention be true, that some of the general principles of the fundamental treatises of moral theology as found in our text-books do not harmonize with the doctrine on special virtues, all moralists will welcome the demonstration of its truth, and will be thankful for an accurate and plain statement of the general principles which should be substituted in place of the old.

No theologian would pretend that the common doctrine found in our text-books on the fundamental treatises of moral theology has reached its final, definitive, and perfect stage. Progress is still possi-

ble, and no doubt progress will be made in the method of presenting the doctrine, in the enunciation and ordering of the principles, and in other ways. And if we are to advance, some one must attempt the task, some one must act as pioneer of the way. This is another reason why this book deserves a welcome. But if the advance is to be on secure lines, it is no less necessary that the critic should be on the look out, and should perform his task honestly and fearlessly.

This is what I propose to do in this article. For the great bulk of the book, inasmuch as it presents in a good English dress the common doctrine of the Catholic schools, I have nothing but praise and a sincere welcome to offer. It is with two or three of those special conclusions at which Dr. McDonald has arrived, and which he says are not to be found elsewhere, that I propose to deal. I may say frankly at the outset that I do not agree with them; and so I find my place among those many students of morals, who, as he tells us in his Preface, the author foresaw would question and deny the success of his attempt in the direction of novelty.

In the remarks which I have to make I shall strive to be as impersonal as possible; I shall look at the doctrines criticized from the purely objective point of view, and I am sure Dr. McDonald will not resent the friendly and honest criticism of a fellow-worker in a field of knowledge, as difficult as it is interesting.

A good practical test of the morality of an action is the effect which it produces. Adultery, theft, self-

ishness, are seen to be morally wrong because of the evil consequences which they produce. What, however, is to be said of the moral quality of an action which produces both good and bad effects? The administration of chloroform renders the subject insensible to pain, but it also deprives him of the use of reason for the time being; craniotomy preserves the mother but it kills the child. How are we to judge of the morality of such actions as these which produce effects of opposite moral quality? Dr. McDonald discusses and rejects the test which is commonly given in our text-books of moral theology. He translates the principle as formulated by Father Lehmkuhl thus: —

> It is lawful to perform an action which produces two effects, one good, the other bad,—provided (1) the action, viewed in itself is good or at least indifferent; (2) the agent does not intend the evil effect, but only the good (it is well to add in some cases: and provided there is no danger of subsequent evil consent or intention); (3) the good effect is produced as immediately as—that is, not by means of—the bad; (4) and there is a sufficiently weighty reason for permitting the evil effect. (Page 149.)

He then proceeds to criticize the principle in this manner: —

> There is not one of these four conditions that does not present difficulties to my mind. Let us take them in order:—
>
> (1) "The action"—that is, as I understand it, the external action—"viewed in itself, must be good or at least indifferent." But is not the whole question at issue this: how is one to know whether this action is good in itself, when its effects are good as well as evil? You tell me that

it is to be considered lawful—which is the same as good—if, among other things, it is good in itself; and I do not see how this makes me a whit the wiser. (Page 149.)

Dr. McDonald misunderstands the principle which he impugns. The whole question at issue is, of course, the morality of the action which produces both good and bad effects. We wish to know whether the administration of chloroform, for instance, is a good action; whether craniotomy is lawful; whether, to take a third example given by Dr. McDonald, it is lawful to walk to the fields in summer time for the sake of exercise and relaxation, in spite of the fact that at each step we crush the life out of many lowly forms of sentient being. The principle tells us that such actions will be morally good if certain conditions are verified. The first is that the action viewed in itself, that is, apart from its effects, must not be bad. This is not the whole question at issue, as Dr. McDonald asserts that it is; the question at issue is, whether the action remains good, even though it produce an evil effect. We can examine the morality of the action apart from its evil effect, and this is what the principle tells us to do. Thus, in the last instance quoted from Dr. McDonald, it is possible to walk in the fields without destroying sentient life at all, or at least we may conceive of its being done; the question is, whether it remains a lawful action in summer time, when it cannot ordinarily be done without destroying animal or insect life. The action of walking in the fields, even in summer time, is ethically good, or at least indifferent, viewed in itself, apart from consequences, and thus it satisfies the first condition laid

down in the principle. This is a distinct step towards the solution of the question concerning the morality of walking in the fields in summer time; when we have got thus far, we are something more than a whit the wiser. For, if the question were whether I may tell a lie to save another's life, or in other words, whether a lie is lawful when it produces a good effect in spite of its also producing a bad one, the question would at once be settled in the negative by the application of our principle; the first condition would not be satisfied, because to lie is bad in itself.

Dr. McDonald proceeds: —

(2) "The agent must not intend the evil effect, but only the good." But, according to the doctrine laid down in the last chapter, the question of intention or subsequent consent does not arise. We want to test whether a certain external action, regarded in itself, is morally good or bad; and I think I have shown that external acts, as such, do not depend for their morality on any concomitant or subsequent act of the will. (Page 149.)

Dr. McDonald misunderstands the second condition as seriously as he misunderstood the first. We are not concerned here with the mere external action regarded in itself. We want to know whether it is lawful to walk in the fields in summer time. The action is regarded as a complete human act, therefore as a voluntary act, as one issuing from free will, therefore as necessarily informed by a certain intention, an intention which may be good or bad. To walk in the fields in order wantonly to destroy sentient life is a bad action, because informed by a vicious intention; to walk in the fields for recreation, or to till them, is

good. With a view to settling whether in a concrete case walking in the fields is a good and lawful action, the principle lays down the condition that the intention must not be bad. This has nothing to do with the disputed question whether the intention can change the nature of the external act.

The third condition is: "The good effect must be produced as immediately as — that is — not by means of the bad."

Criticizing this condition Dr. McDonald asks: "Is this universally true?" I answer, Yes, if in the circumstances the evil effect remains evil, for we must not do evil that good may come of it. To amputate a diseased leg in order to save life is not evil, and so the example does not show that the condition laid down is false, though the Doctor seems to think that it does. And though he here implies that when chloroform is administered, the good effect is obtained through the evil, he does not prove it; and even if that were proved, he would still have to show that to produce unconsciousness by administering chloroform when there is good reason for it, is evil. Dr. McDonald refers us to another work of his for a criticism of the terminology of the fourth condition, and then briefly subjoins:

> The "weighty reason" required is the good effect which must also be produced by the action. . . . Now it is not much addition to one's sum of knowledge to be told that an action is wrong which does not produce any but an evil effect; nor does it help much to be informed further that the good effect produced must bear some proportion to the evil. (Page 150.)

I shall have something to say to this further on.

After his polemic against the principle of a double effect, Dr. McDonald inquires whether the distinction between direct and indirect causality may not serve as a basis for the test which ought really to be applied in all cases of mixed results. He rejects this suggestion, but in his discussion on this point he falsifies the meaning of the distinction as commonly used by theologians, and confounds it with the distinction between *per se* and *per accidens*. When theologians treat of the lawfulness of direct and indirect killing, the distinction does not merely refer to the direct or indirect causality of the external act; it has special reference to the intention.[1] Dr. McDonald, indeed, rules the question of intention out of court, but such is not the practice of moral theologians when they discuss the questions with which the Doctor is here occupied, and inasmuch as those questions are concerned with human acts, acts necessarily informed by some intention, not with the merely physical external acts of the body, as he seems to suppose, it is difficult to see the reason for abstracting from the intention.

Finally, the Doctor proposes a principle of his own in substitution for the principle of a double effect. He states it thus: —

[1] "*Directe* id dicitur intendi in quavis actione, quod *primario* et *ratione sui* intenditur. Correlativum habet *indirecte*, quod dicitur de illo, quod tantum ratione alterius intenditur et quasi *per accidens*. . . . In moralibus *directe* intendit homicidium, qui illud mandat; *indirecte*, qui illius aliquam causam ponit, ut ebrietatem, ex qua illud sequatur."— *Lexicon Scholasticorum Verborum.*

An external action is to be considered morally good, even though it should produce a bad as well as a good effect, provided (1) it does not subordinate a being which by nature is not to be subordinated; and (2) the good effect produced is sufficient to compensate for the bad. (Page 158.)

The chief reason why Dr. McDonald wrote his book was, it will be remembered, to remedy a defect in other authors. As he says, just before the statement of his new principle: —

I am convinced that when they come to practical work our theologians retain their sound common sense and forget or neglect the general principle which they were at such pains to establish at an earlier period, when treating of what I may call the metaphysics of moral science. (Page 157.)

Unless I am very much mistaken this procedure will be necessary in the case of Dr. McDonald's own principle. In fact, he himself virtually acknowledges as much. On two conditions, he says, an external action will be morally good, even though it produces a bad as well as a good effect; first, it must not subordinate a being which by nature is not to be subordinated. But which are those beings which by nature are not to be subordinated? Unless this is known, it will not be possible to apply the general principle. It will only be a general rule of conduct in so far as it enables us to decide the morality of particular cases. However, Dr. McDonald confesses that there is no general rule that can be given.

It is reasonable to ask [he says] how one is to decide whether and how far any being is by nature subservient

to another. I know of no general rule that may be applied; one has to go through the different essences in nature, examine their circumstances, compare them, and then decide whether and how far they are independent or subservient. (Page 163.)

To go through the different essences in nature, examine their circumstances, and compare them, is the work of a theologian, and not an easy task even for him; so that there will be no slight difficulty in discovering whether the first condition is verified in a particular case.

The second condition is, that the good effect produced should be sufficient to compensate for the bad. Now this seems identical with one of the conditions ordinarily required by theologians in the common statement of the principle of a double effect. "There must be a sufficiently weighty reason for permitting the evil effect," says Father Lehmkuhl, quoted above. Dr. McDonald would seem to have forgotten his criticism of that condition in the former connection: "Nor does it help much," he wrote, "to be informed that the good effect produced must bear some proportion to the evil" (page 150). If it did not help much there, I cannot see how it can help much here. Furthermore, he confesses that here also no general rule can be given for deciding whether the good effect is sufficient to compensate for the bad (page 165). The circumstances must be balanced in particular cases, certain allowances have to be made; what those allowances are is a question which the writer on ethics has to face when he comes to treat of the separate virtues; in doing this he must draw liberally on the

light supplied by other practical sciences. The work, evidently, is not child's play; in any case the result will not help us much.

I am afraid practical moralists will not find Dr. McDonald's principle of much use. It is as difficult to decide whether the conditions laid down are verified, as to decide the moral quality of the external action.

Moreover, unless I seriously misunderstand the Doctor's meaning, the principle is inadequately formulated. As laid down it would allow actions to be done which are certainly wrong. For example: I am in poverty, and I have the opportunity of relieving my wants and those of my family by stealing £5 from a wealthy neighbor. This action produces a good and a bad effect; it relieves my want, though to be sure it also deprives my neighbor of a sum which he will hardly miss. The action will be lawful, according to Dr. McDonald, on condition that it does not subordinate a being which by nature is not to be subordinated, and if the good effect is sufficient to compensate for the bad. Both these conditions would seem to be verified by my action. I subordinate money to human wants, as by nature it should be subordinated; the good effect is out of all proportion to the bad. The money in my hands goes to feed my family, in the hands of its owner it would go to feed his dogs.

I must confess I do not see why this is not a legitimate application of Dr. McDonald's principle; it is with the purpose of excluding such applications of the principle of a double effect that theologians re-

quire, as a first condition, that the action in itself should be good, or at least indifferent; but Dr. McDonald rejects that condition as involving the whole question at issue.

Besides the principle of a double effect, Dr. McDonald adversely criticizes the common doctrine about penal laws. However, his chief objections to that doctrine are not new; they appear to me to have been abundantly answered by such classical writers on Law as Suarez and Laymann. Besides, I should very much doubt whether the Doctor's rather strict views on this point are at all general in the land of potheen. It will be more interesting to pass on to his criticism of the fundamental principle of Probabilism and Equiprobabilism alike, the principle that doubtful laws do not bind the conscience.

This principle is capable of being understood in several ways. All theologians hold that doubtful laws bind in some sense. Thus, in a case of practical doubt as to the existence of a law I am bound to make due inquiry, and I am not at liberty to act until I can, directly or reflexly, form a certain conscience on the question. Dr. McDonald strives to show that there is no general law which obliges one in doubt to acquire certainty as to the rightness of his action before he proceeds to act. (Page 199, *sqq.*) But surely the law which forbids us to act with a doubtful conscience binds us to do this. *Quod non est ex fide peccatum est.* If I doubt whether it be a day of abstinence or not, and eat meat without taking any pains to form a certain conscience, I commit a sin, and that whether it be a day of abstinence or not. For the

very fact of my eating meat in spite of my being doubtful whether it is not forbidden by the Church shows that I am prepared to break the law of the Church about abstinence, and this is a sinful disposition, which is externated by my eating meat, which act therefore is a sin, whether there be a prohibition to eat meat on that day or not. This explains why it is always a sin to eat meat with a doubtful conscience, even when the doubtful law does not exist. How would Dr. McDonald explain this on his assumption that doubtful laws bind directly and of their own force? A law which does not exist cannot bind. Dr. McDonald's argument, therefore, seems destitute of force. The fact that the sin committed by one who acts in doubt is of the same species as would be the sin committed against the doubtful law if it existed, does not show that a doubtful law binds the conscience; it only proves that there is a general law which prescribes that we must form a certain conscience before we act.

Moreover, a doubtful law may in a certain sense be said to bind after due inquiry has been made, and the doubt cannot be directly solved. If, after forming my conscience in this case I act against the law which really exists, I commit a material sin, but I am excused from formal guilt. All theologians, I think, also admit this. The doubtful law is said in such cases to bind imperfectly, *in actu primo,* not perfectly and *in actu secundo.* Dr. McDonald hardly seems to admit the validity of this distinction as applied to the obligation of law, and almost violently attacks the defenders of probabilism, who use it in the exposition

of their system. His remarks, however, show that he has misunderstood its history and meaning.

I do not know [he writes] when or by whom this distinction between first and second act was introduced into treatises on the binding force of laws. St. Alphonsus took it, apparently, from Cardinal Gotti; and the curious in such matters may inquire whether the learned Cardinal is responsible for first transferring the terms in question from the treatises on actuality and activity, where they were found originally and where they serve some purpose, to treatises on law and its obligation, where they are almost without meaning. (Page 206.)

But surely treatises on law and its obligation are treatises on actuality and activity. This appeared so evident to Suarez that he took it for granted at the beginning of his great treatise on Laws.[2]

There can be no objection, then, to using the distinction, *in actu primo* and *in actu secundo,* of the different phases in which we may consider the obligation of laws. Such classical authors as Suarez and Sylvius used it in this sense long before Gotti wrote. The very term *obligation* is derived from physical activity, as St. Thomas explains in a celebrated passage: —

Ita se habet imperium alicujus gubernantis ad ligandum in rebus voluntariis illo modo ligationis qui voluntati accidere potest, sicut se habet actio corporalis ad ligandum res corporales necessitate coactionis. Actio autem corporalis agentis nunquam inducit necessitatem in rem aliam nisi per contactum coactionis ipsius ad rem in quam agit, unde nec ex imperio alicujus regis vel domini ligatur aliquis, nisi imperium attingat ipsum cui imperatur; attingit autem

[2] Lib. I., c. iv., n. 3.

ipsum per scientiam: Unde nullus ligatur per præceptum aliquod nisi mediante scientia illius præcepti; et ideo ille qui non est capax notitiæ, præcepto non ligatur; nec aliquis ignorans præceptum Dei, ligatur ad præceptum faciendum, nisi quatenus tenetur scire præceptum. Si autem non teneatur scire, nec sciat, nullo modo ex præcepto ligatur. Sicut autem in corporalibus agens corporale non agit nisi per contactum, ita in spiritualibus præceptum non ligat nisi per scientiam.[3]

It is difficult, then, to see what ground Dr. McDonald has for objecting to a distinction which is in accord with the nature of things, and which has been consecrated by the usage of centuries in the schools. His subsequent remarks, however, show that he has seriously misunderstood the meaning in which the distinction is used.

Now, when those theologians [he writes] who defend probabilism by calling in aid this distinction between first and second act,—when they say that a law which has been promulgated, indeed, but is not yet known for certain to a particular subject, binds only in first act, what do they mean? What can they mean? The first act of the law began to be, as we have seen, when the legislator's jurisdiction began; and all the laws which it is possible for him to make, even though he has and never had the least intention of making them, bind in first act by the very existence of this power. That is the only philosophical meaning attaching to the term "first act,"—a power to operate, as distinguished from an operation. (Page 207.)

There is a certain note of triumph about this, and it would be unfair to leave the reader to suppose that Dr. McDonald is unaware that the usage of theolo-

[3] *De Veritate*, q. 17, a. 3.

gians is against him. The facts are against him as well. We are here concerned not with the jurisdiction of the legislator, but with the obligation, binding force, activity, of the law. The jurisdiction of the law-giver is in first act while it remains *in habitu;* it comes into second act when it is used to make a law. The law just made but not yet in force is in first act; when it comes into operation, when it begins to bind, it is in second act. This may be illustrated and at the same time proved by a brief quotation from Sylvius: —

> Controversia [utrum lex naturalis obliget omnes homines generaliter, etiam pueros et amentes] tolli posse videtur, dicendo quod ea lex omnes omnino aliqualiter obliget, scil. obligatione saltem imperfecta et in actu primo: quamvis non omnes obliget obligatione perfecta et in actu secundo.[4]

We have learned from St. Thomas, quoted above, that a law binds perfectly and fully only through the knowledge of the subject. A law is a rule framed to direct the actions of rational beings, who are guided by reason and will; in order then to guide them the rule must be known. A law is also a rule given to a community of men, not to an individual, so that in order to bind, it must be authoritatively brought to the knowledge of the community as such, or in other words, it must be promulgated. *Leges tunc instituuntur cum promulgantur.* Laws then do not exist in their full and perfect being until they are by promulgation brought to the certain knowledge of the community. This is the teaching of St. Thomas, and,

[4] In Iam IIae q. 94, a. 4.

I think, of all theologians. Yet it is a truth which is sometimes ignored or forgotten by Dr. McDonald. Thus, on page 196, we read: —

> Moral theologians argue as if a law could not exist objectively whenever there is reasonable doubt as to this objective existence; either because, in that case, it could not have been sufficiently promulgated; or because laws can bind only those who have knowledge of their existence. These arguments, however, are so feeble that I can hardly regard them as being intended to prove,—what, nevertheless, is the only thing they could be conceived to prove,—that the existence of law, objectively considered, is affected by doubt in the mind of the subject.

When moral theologians use these arguments to show that a doubtful law does not impose a perfect obligation, they are not dealing with a merely negative doubt, nor with the merely subjective doubt of some particular individual; they mean a positive doubt resting on solid grounds, a doubt resting on an objectively probable opinion, which makes it objectively doubtful whether the law has been promulgated. For if it had been promulgated there could not be such ignorance of its existence among the community. In such circumstances the law has not been sufficiently brought to the knowledge of the community, and so it is wanting in one of its essential elements. This is what St. Alphonsus and other theologians mean when they say that a law which is not promulgated does not bind, or is no law; and, that a doubtful law is not sufficiently promulgated. If Dr. McDonald had always borne this in mind, he would not have written such passages as the following: —

Of themselves, therefore, doubts in the mind of those who are subject to a law, prove absolutely nothing as against the existence of the law; and instead of laying down the principle, doubtful laws do not bind, we should say, It is doubtful whether laws bind in cases of doubt. A doubtful law binds or does not bind according to the truth or falsehood of either of the opinions about its existence or its meaning. (Page 197.)

Nor is it a question of subjective responsibility or freedom therefrom, as the Doctor seems to suppose: —

The question of responsibility is thus raised: when and why is one responsible for an act which is out of order materially? Is it necessary that one should be subjectively certain of the material deordination? Or may a man be held responsible even though he is merely in doubt subjectively? The advocates of probabilism commonly maintain that there can be no responsibility as long as subjectively the agent merely doubts of the objective deordination. Is this proved? Is it true? (Page 198.)

Probabilists maintain that a probable opinion against a law does not merely affect individual responsibility, it affects the objective binding force of the law. However, I never came across a probabilist who maintained what Dr. McDonald says they commonly do maintain. This will be clear from what has been already said, and it is not necessary to comment on the three or four pages of argument with which the Doctor proves the falsity of a thesis which no probabilist, that I know of, would defend.

In spite of his objections to the maxim: Doubtful laws do not bind — Dr. McDonald allows that sometimes it is true. A doubtful law does not bind, he says, "whenever observance of such a law is the

greater of two or more evils or dangers of which one has to be faced or accepted." (Page 205.)

There is, of course, a well known principle of moral theology which prescribes that in case of a perplexed conscience, when we must choose one of two evils, there is an obligation to choose the less. Dr. McDonald goes further than this and seems to propose the principle as the one universal solvent of all cases of doubtful conscience. He writes: —

> Doubtful laws are to be observed whenever the evil or the danger to be apprehended from not observing them, is considered greater than any that would result from observance. This, accordingly, of all the principles yet proposed for the resolution of practical doubts, is the only one that a scientific moralist can harmonize with the other principles of his science. (Page 205.)

Further on he gives us an algebraic formula for the principle: —

> When once you have become convinced that in cases of doubt the golden rule is to follow the course which is apprehended as least dangerous, the next question to be considered is, how quantities of danger are to be measured and compared so as to find out which is the least. It seems to me that they may be measured according to the following general rule: The quantity of the evil that is feared, multiplied by the probability that it will occur,—probability being regarded as a fraction of the unit certainty,—is equal to the amount of danger in any given case. The formula may be stated algebraically thus: $D = lp$; where D means the danger, l the loss or evil, and p the probability that this loss will be incurred. (Page 210.)

It seems to me that there is no probability that this golden rule will be adopted by moralists for other

cases of doubt than those so-called cases of perplexity, in which there is no choice but the less of two moral evils. In one class of cases it would be immoral to apply it. I cannot do better than take an instance given by Dr. McDonald himself: —

> Take, for instance, the case of a trades-union rule which is probably inordinate. It is a serious loss to the artizans concerned if the rule should be in order objectively whilst they are not allowed to act on it; and it may also be a serious loss to employers if the men are allowed to act on a rule which, objectively, is a violation of employers' rights. In this case the dangers are capable of being compared, just as if the question in doubt were one merely of fact. (Page 213.)

Let l be the loss to the artizans and p the probability that it will occur, while l' represents the loss to the employers and p' the probability that it will occur. Then by the formula, if

$$lp > l'\,p'$$

the artizans may act on the trades-union rule, which is probably unjust. And so, according to this doctrine, I may do something which is probably unjust to my neighbor in order to avoid a greater money loss to myself. Does Dr. McDonald mean this? Is it sound morality?

In many other cases of doubt, the rule cannot be applied for want of definiteness in the elements of the case, or because the two evils or losses are incommensurable, or too dependent on subjective considerations. I doubt, for example, whether I have said my Breviary. In such cases Dr. McDonald tells us,

if I understand him rightly, to estimate the relation of the loss accruing from enforcing a law which does not exist, to that which is caused by not enforcing a law which does exist. The loss accruing from enforcing a law which does not exist in this case is about an hour of my time; but, on the other hand, by saying my Breviary again I gain merit. On the other side of the account by not enforcing a law which does exist I lose spiritual merit, but I gain an hour of time. Dr. McDonald seems to suppose that there is always loss to somebody, the Church or the law-giver perhaps, when a doubtful law is not enforced. This I fail to see. When an adverse custom makes the obligation of a law first of all doubtful, and then removes it altogether, is it not for the public good in the circumstances? Putting this aside, how can the loss of merit be measured in this case? On one supposition I gain merit for saying my Breviary twice in the day, on the other I lose what I should have gained by saying it once. Then, what is the relation between the value of merit and of time? And what value shall I give to my time? It is worth more in the morning when I am fresh; less after dinner; it has probably a middle value in the evening up to, say, six o'clock, when it rapidly increases till bed-time. But how measure all this quantitatively for the purposes of the formula?

Then there is the difficulty of assessing the probabilities. Dr. McDonald takes it for granted that a probabilist will assess them differently from an equiprobabilist. Here, then, we are landed in all the dangers of subjectivism. In short, Dr. McDonald's

great principle had better be confined to the class of cases for which it is suitable, and for which it is commonly employed by theologians. If we attempt to apply it to other cases, we shall find that it is no fixed guide, but a very weathercock which will point in any direction towards which the impulse of passion drives us.

The foregoing strictures on the special conclusions arrived at by Dr. McDonald in his book suggest a question with regard to his fundamental assumption, that the general principles as stated in our text-books on Human Acts, etc., are not in keeping with the particular conclusions formulated in the treatises on the special virtues. Is this true?

It seems to me that it is only true in a very qualified and immaterial sense. The general principles necessarily abstract from special features and particular circumstances, which have to be considered and allowed for, when the general principles are applied to concrete cases. This is no more than has to be done in other sciences. When we apply the truths of pure mathematics to physical science, corrections and allowances have to be made continually. The infinite complications of nature are too complex for our abstract theories. In some such sense it may be said that the intricacies of human acts cannot be expressed in a simple formula. And yet, just as no one would deny the truth and the value of pure mechanics, because the truths it teaches have to be applied with caution and with necessary corrections when we come to applied mechanics, so the truth and the value of the general principles of morality should not be im-

pugned because in their application we have to allow for special circumstances. This is done by theologians, who frequently apply a general principle tacitly, without quoting it in so many words, just as the mathematician uses the multiplication table, or the logician the principle of contradiction. If Dr. McDonald will give due attention to these considerations, I shall be surprised if the inconsistency which he has noticed in our text-books will not disappear.

XVIII

SCRUPLES

Scruples are as distressing and dangerous to the poor penitent who suffers from them as they are troublesome and difficult to deal with from the point of view of the confessor. Theologians have studied the subject for centuries, and we have the results of their labors in our handbooks of moral theology. There we find the notion of the scrupulous conscience accurately defined, its causes traced, and various remedies prescribed. Among the causes of scruples those of the natural order predominate. Thus, to select one of our modern theologians, although Lehmkuhl teaches that scruples may be due to the action of the devil, and that we must also take into account the permission of Almighty God, yet he pays most attention to the natural causes of scruples. These, he says, may be either bodily or spiritual. In detail he enumerates a melancholy and timid disposition, a diseased state of the brain and of the nervous system, weakness caused by overwork, study, or austerities, weakness of judgment, pride and self-conceit, suggestion by reading scrupulous authors or from coming under the influence of a too scrupulous confessor. It is obvious that these natural causes may, and probably will, manifest themselves in other matters besides scruples of conscience about sin and confession. We

are not, then, surprised to find that this is so. A pathological state of mind, of which the scrupulous conscience is only one manifestation, has long been recognized by the medical profession. However, it has been specially studied by the medical profession only within the last fifty or sixty years, and by foreign more than by British doctors. It may be of interest, and not without profit, to see something of what the doctors of medicine have done in this field, a field common to them and to the moral theologian.

It will be best to begin by transcribing a few typical cases. These will convince us that medicine has essentially the same phenomena to deal with as moral theology has. What the moral theologian calls scrupulosity, the medical practitioner calls the doubting mania, in French *folie du doute,* and *délire du toucher,* in German *Grübelsucht.*

My batch of cases is taken from *Hypnotism,* by J. Milne Bramwell, M.B., C.M., London, 1906.

In the first case, which I select out of many, the moral element is very conspicuous. A confessor would not be astonished if he got such a case in the confessional. He would class it among those in which the sufferer fears sin in all his actions.

"Mr. ——, aged 28, first consulted me in April, 1894. His father was very nervous and passionate, and had suffered from brain fever and chorea. At the age of 14, the patient had many religious doubts and fears, and believed he had committed the unpardonable sin. At 16, while working in a cocoa manufactory, he began to fear that the red lead, which was used in fastening certain hot pipes, might get into the tins containing cocoa, and so poison people. This was the commencement of a *folie du doute*

and *délire du toucher,* which had never since left him. Instead of going on with his work he was irresistibly impelled to clean and reclean the tins. The following is taken from the letter of a friend to whom he confided his troubles:—'On October 1st, 1891, Mr. —— told me that he had attempted to commit suicide, as his life was so miserable (he had taken poison). He had read of a case of poisoning through eating chocolate, and connected himself with it, though it was five years since he had helped to manufacture any. He now believed he might have been careless with the molds, and thus have produced a poisoned chocolate, which years afterwards had caused the child's death!' The grotesque absurdity of the story, as he related it to me, would have made me laugh, had I not felt how terribly real it was to him. His vivid imagination had pictured every incident of the tragedy: the child buying the chocolate, running home full of happiness, then becoming ill and gradually sickening in awful agony till released by death. The keenness of mind with which he sought to prove the reasonableness of his belief that he had poisoned the child was extraordinary. He wrote:—'Yesterday I was unscrewing some gas burners in a provision shop and got some white lead on my hands, and I have been thinking that it may have got amongst the food.' I found that brooding over this fancy had brought him to the verge of despair, and for weeks his life was a perpetual agony. He worries himself about his work of fixing advertisement-plates to walls, and can never persuade himself that they are securely fastened. He fancies the nails are bad, or the mortar loose, and makes himself ill over it. I have pointed out to him that if a plate fell it would almost invariably slide down the wall. This has not prevented him from painting a most elaborate mental picture of the decapitation of an unfortunate youngster, who happened to be playing marbles with his head against the wall. To enumerate all his troubles would take a small volume. . . . When I first saw the patient the *folie*

du doute and *délire du toucher* were constant, and most varied in their manifestations. If he accidentally touched persons in the street, he began to fear that he might have injured them, and exaggerated the touch into a more or less violent push. If the person touched were a woman, he feared that she might have been pregnant, and that he might have injured the child. If he saw a piece of orange-peel on the pavement, he kicked it into the road, but soon afterwards began to think that this was a more dangerous place, as any one slipping on it might strike his head against the curb-stone; and so he was irresistibly impelled to return and put it in its former position. At one time he used to bind himself to perform certain acts by vowing he would give God his money if he did not do them. Then, sometimes, he was uncertain whether he had vowed or not; owing to this he gave sums to religious objects which were quite disproportionate to his income. Apart from his peculiar fancies, I found the patient perfectly rational and intelligent; and though his *délire du toucher* hindered him greatly in his work, he generally managed to execute it, but on some occasions he was compelled to abandon the attempt."[1]

The next case has also a moral tinge in it.

"Mr. ——, aged 32, April, 1895. Ten years previously this patient began to have peculiar doubts and fears. He felt that if he did anything opposed to popular superstition something dreadful would happen to the Almighty. He was capable of recognizing the absurdity of this when it was pointed out to him; but directly afterwards his morbid ideas returned and governed his actions. Every fresh superstition he heard of was added to his list; and so many unlucky days and places were created by his doing, or failing to do, things against, or in conformity with, these superstitions, that his actions were seriously interfered with. Thus, months often passed before he

[1] *Op. cit.*, p. 241.

could find a propitious day for buying an article of clothing, and a still longer time would elapse before he found a suitable occasion to put it on. Sometimes there was nowhere for him to go, and nothing he could do. He was utterly wretched, but had succeeded in concealing his trouble from every one."[2]

There is no ethical quality in the next two cases.

"Mr. ——, aged 25, first consulted me March, 1890. Formerly strong and athletic, distinguished football player, bicyclist, etc. Two years previously, after the death of his mother from cancer of the breast, he began to fear that he might contract the same disease. This idea grew stronger and stronger; he became neurasthenic, and suffered from insomnia, depression, dyspepsia, etc. Finally the dread of cancer passed into the firm conviction that his left breast was infected by it. He now remained nearly always in one room, and would not go into another without muffling himself up and putting on an overcoat. For some months he complained of difficulty in moving the left arm, and carried it in a sling. I found nothing to justify his fears, but the muscles of the arm were distinctly wasted from disuse."[3]

"A man aged 40, of healthy constitution, has since childhood attached prophetic signification to puerile facts and events. To wear a certain necktie promises him happiness or unhappiness. If he does not touch a certain boundary-stone he thinks evil will happen to him. If he does not re-read a certain line, or make a certain letter thicker when writing, something horrible will befall him. At first, his strange ideas were insignificant, or he was able to resist them; but as he grew older they filled his life and rendered it intolerable. For twenty years he made a pilgrimage every Sunday to the railway station in order to kick a certain post three times with each foot. If he did not do

[2] *Op. cit.*, p. 244. [3] *Op. cit.*, p. 239.

this his father would die. In order to rid himself of these obsessions he made vows and associated threats with them. He said, for example: 'If I yield to one of my caprices in the course of an hour I shall have apoplexy before twenty-four hours have passed.' At first this succeeded, but soon the effect of the vows diminished, and he was compelled to make them stronger. The unhappy man now stands sometimes for a quarter of an hour muttering the most fearful imprecations, in order to get the strength to go an errand. If he omits them he is forced to obey the most absurd impulses. He must stop before a certain house, retrace his steps, touch boundaries, stop passers-by, or touch their clothes: in a word, he is obliged to act like a maniac. His intellect is perfectly normal, and he attends to his business as if nothing were the matter.''[4]

These senseless fears and anxieties are often connected with the sufferer's professional duties.

''A young priest, not timid in the performance of his other religious duties, suffered agony on entering the pulpit. Another suffered in the same way when he received a confession. A medical student suffered extreme agony at the sight of a few drops of blood. A chemist made up a prescription which caused the death of a customer. He was able to prove that it was dispensed exactly as ordered by the doctor; but, as his existence became a veritable torture from constant fear of making a mistake, he sold his business. A notary had morbid fears only when he had to give a professional opinion. A hairdresser noticed that his hand trembled one day, and then constantly dreaded that this would reappear when he shaved his best customers. The same anxiety did not exist when he had to shave a poor or unknown customer. Dr. Frémineau reports the case of an actor who abandoned his profession on account of extreme stage-fright. This condition only

[4] *Op. cit.*, p. 250.

appeared after a successful career. Dr. Bérillon reports several similar cases. Reigler has noticed a morbid fear amongst railway mechanics, to which he has given the name of *sidérodromophobie;* this is characterized by an extraordinary aversion to their habitual occupation, and the sight of a train or the whistle of an engine is sufficient to revive their anxiety. Grasset mentions that a distinguished Parisian surgeon commences to be anxious the moment a patient leaves his consulting-room with a prescription. He anxiously asks himself whether he could have written centigrammes instead of milligrammes; and only recovers his mental calm when his servant, sent to seek the patient, brings back the prescription, and he can see that it is all right. Another doctor, he says, is rendered perfectly miserable by the fear of microbes. Brochin reports the case of a doctor who fears no contagious malady except diphtheria, and who shows proof of veritable heroism every time he sees a diphtheritic patient. A case has recently been reported from abroad, where a medical man, dreading that his fees might be the means of contagion, invented elaborate methods of sterilizing them; and I know of a similar case in this country."[5]

These cases could be multiplied indefinitely, but they are fairly typical and will serve our present purpose. In all of them the common element of vain fears and consequent anxieties is conspicuous. This same element is that which constitutes the essence of a scruple, and the only difference between them and ordinary cases of scruples lies in the object of the empty dread and anxiety. The scrupulous person has an unreasoning dread of committing sin, and is morbidly anxious about it. While in some of the cases cited a similar object may be discerned, in oth-

[5] *Op. cit.*, p. 251.

ers the object of dread and anxiety has nothing to do with ethics and morality. We are then justified in regarding the object of these vain dreads as accidental and immaterial; the essence of scruples, *folie du doute,* or the doubting mania is the same, and it lies in the vain dread of something and consequent anxiety and trouble about it.

Medical writers agree in classifying these and allied pathological states of mind under the head of fixed ideas or obsessions. They note that there is a gradual progress from the state of perfect sanity, the *mens sana in corpore sano,* to that of insanity and madness. The sane mind estimates things at their true value. If an object is to be feared and avoided, it prescribes the necessary means to be taken for that purpose and entrusts the will with the task of putting them in execution. It does not fear an evil more than is reasonable, and it has control over its fears, so that it can dismiss them if they are groundless, or, at least, prevent them from paralyzing all activity. Such a state of perfect health is rare. We are nearly all a little bit mad and a prey to our impressions and imaginations. Something makes a vivid impression on us, a musical air, a joke, an apt phrase, or an unkind look or word, and it takes possession of the mind. By constant repetition the effect becomes intensified, exaggerated, and persistent; we cannot get rid of the idea; it refuses to budge even at our peremptory word of command.

No very great harm has been done so far, but every idea has a tendency to get itself translated into act. If it is deeply ingrained in the imagination, vivid,

and persistent, it exerts a strong attractive or repulsive force on the will. If the will is weak, either from natural causes or from habit, if it has been accustomed to yield and to allow the idea to have free course, we have the first pronounced stage of mental disease, the fixed idea properly so called.

Fixed ideas of this kind manifest themselves in very various ways. The following types are familiar to students of the subject: — Arithmomaniacs are impelled by an unreasoning impulse to count all sorts of objects and to draw up statistics. Onomatomaniacs feel a morbid desire to know the names of everybody they meet. Metaphysical maniacs are tormented by a craving to get to the bottom of insoluble problems. I knew a case of an ecclesiastical student who furtively attended the Mass said for the people on Sundays in order that he might be able to draw up statistics about the attendance. He put down in his book how many men, women, boys, and girls attended Mass every Sunday and holy-day of the year. A college boy whom I knew kept a record of all the cricket scores of the season, and in his spare time he drew up imaginary matches and assigned imaginary scores to the players. A typical case is quoted by Ribot:

"A young law student, the son of neuropathic parents, was completely absorbed with the idea of knowing the origin, the why, and the how of the forced circulation of bank-notes. . . . This thought kept his attention continually strained, prevented him from doing anything else, placed a bar between the external world and himself, and whatever efforts he might make to rid himself of it, he

was utterly unable to accomplish that purpose. Finally concluding that notwithstanding his long reflections and deep researches to the end of solving this vexed problem, he was incapable of any other mental work, he fell into such a state of despondency and apathy that he desired to discontinue his course of studies. . . . His sleep insufficient and broken; frequently he lay awake whole nights, ever absorbed by his dominant idea. In this case a very singular phenomenon must be noted; namely, that in consequence of the continuous tension of his mind upon the problem of bank-notes and their forced circulation, he at last retained permanently before his eyes the image and picture of the bank-notes themselves, in all their varieties of form, size, and color. The idea with its incessant repetitions and intensity, came to assume a force of projection that made it equivalent to reality. Yet he himself had ever the full consciousness that the images floating before his eyes were merely a freak of his imagination."[6]

This last characteristic is important. One who is laboring under a fixed idea is conscious of his weakness, and is often ashamed of it, but for all that he yields to it, and finds it more or less difficult to avoid doing so.

In this first class of fixed ideas the intellect alone is concerned. In the second class an emotional element also makes its appearance. The besetting idea is accompanied by fear, dread, and anxiety, and to this class scruples belong. Here also the objects which excite the unreasoning dread are very numerous and varied. In agoraphobia the sufferer cannot cross an open space without being overcome by a feeling of dizziness; in claustrophobia, on the contrary, the object of dread is a confined space; some people

[6] *The Psychology of Attention*, Eng. transl., p. 87.

dare not look down from a lofty height for fear of throwing themselves down. Some are morbidly afraid of infection from disease and are constantly washing their hands to escape it; others are never satisfied that they have locked the safe, or their place of business, or the door of their house when they left, and they are impelled to return again and again to make sure, and yet they are never satisfied. However, they have not as yet lost all self-control in the matter, they sometimes succeed in resisting the impulse which they well know is foolish and groundless. In this respect they differ from the third class where the will has become powerless to resist the impulse. To this third class belong kleptomaniacs, erotomaniacs, dipsomaniacs, homicidal and suicidal maniacs, and many other instances. With the loss of self-control this third class has passed beyond the range of help at the hands of the confessor; we are no further concerned with it beyond marking it as the limit toward which the other classes tend. We are here interested in the causes which produce the second class and in the remedies to be applied for their cure.

There is a general consensus of opinion among the medical faculty that all these troubles are due to one and the same physical cause — degeneracy. Ribot says: —

"The authors that have investigated the determining causes of fixed ideas, all reach the same conclusion; they find it, namely, to be a symptom of degeneration. One might even maintain that not everybody who may wish it can have fixed ideas. A primordial condition—the neuro-

pathic constitution—is requisite. The latter may be inherited, or it may be acquired. Persons of the one class are of the offspring of parents to whom they are indebted for the sad legacy of degenerate organisms. These are by far the most numerous. The others have been exhausted by circumstances and mode of life: physical or intellectual fatigue, emotions, strong passions, sexual or other excesses, anemia, debilitating diseases, etc." [7]

As we have seen, theologians, too, are prepared to assign to degeneracy, physical or nervous debility, a large share in the production of scruples. However, they mention other causes as well, and in this they would seem to have the support of Dr. Bramwell, who writes: —

"Imperative ideas are usually regarded as being typical of degeneracy, and especially of hereditary degeneracy. Some of my cases seem to confirm this: they were weak mentally and physically, and had unsatisfactory hereditary antecedents. . . . On the other hand, the transition from the normal state to imperative ideas, is almost insensible—the repetition of an insignificant saying being, according to Ribot, the slightest form, and preoccupation, such as anxiety about an examination, a degree higher. Most children, too, have suffered at one time or another from imperative ideas. This appears to arise from an exaggerated sense of the importance of what they say and do, and also from an exaggerated fear regarding the notice taken of them by others. [Is not this allied to the pride and self-conceit mentioned as causes of scruples by theologians?] Some of my patients were physically far above the average, and many of them possessed mental endowments of high quality, and their morbid ideas did not prevent them doing valuable work. Most of them, it is true, were of an emotional nervous type, but is the sensi-

[7] *The Psychology of Attention*, Eng. transl., p. 89.

tive, mobile brain necessarily degenerate? May not the accidents to which it is liable be the result of its higher and more complex development? The thoroughbred is more emotional and nervous than the cart-horse, but is this necessarily an evidence of its hereditary degeneracy?'' [8]

In the light of the foregoing study of the nature and causes of scruples, the rules given by theologians for their cure will, if I mistake not, acquire a new value. First and foremost we see the necessity of a prudent, kind, but firm, confessor. He will not get angry or impatient with his scrupulous penitent, the case will rather excite his interest and sympathy. As soon as he has convinced himself that his penitent is really scrupulous, he will try to discover the cause of his malady. Very often the cause will be degeneracy in the medical sense, and the confessor, while prescribing other remedies, will take care to recommend him to see a doctor or he will himself suggest a holiday or feeding up. If the cause is some form of pride he will know how to administer a paternal snubbing when occasion arises. As the scruples are nothing but empty fears, he will briefly point this out to his afflicted penitent, and as the scrupulous state has been formed by indulging those vain fears, the confessor will take care as far as possible to stop the process of fostering them. He will not allow anything to be said about them, they must not be confessed, nor even thought about, if that is possible. With this object in view he will prescribe constant occupation in interesting work of one sort or another. Such indirect remedies are often most effective, but

[8] *Hypnotism*, p. 255.

they should be supplemented by direct action against the scrupulous dread, much in the same way as a horse is taught to face objects at which it is inclined to shy. If the scruples have their origin in indiscreet fervor, the penitent should be taught that God asks for a reasonable service, and that spiritual progress, if it is to be solid and lasting, is almost always slow and gradual. An humble consciousness of one's own weakness and consequent trust in God are great safeguards against the danger of scruples.

XIX

THE DOCTRINE ON SACRILEGE IN MORAL THEOLOGY

It would be worth while for some modern Sir Henry Spelman to write a book on the history and fate of sacrilege in modern times. Starting from the first French Revolution, or even somewhat earlier, and continuing his narrative down to our own times, the writer would find only too abundant material for his purpose. In France, in Italy, and in Spain, especially, the material would be plentiful, and if the history of private owners of Church property is any reflex of that of those nations themselves, the moral that sacrilege does not prosper even in this world would be no less striking than it appears in the pages of the worthy knight of the time of Queen Elizabeth and King James I. Sir Henry points out that the immense treasure which the suppression of the monasteries put into the hands of Henry VIII melted away, nobody knew how; while rebellion and disaster followed quickly on the crimes by which the religious houses were robbed and destroyed. The property itself seemed to carry a curse with it, so that sterility, and death by violence became marked characteristics of the families that were enriched with abbey lands.

In one respect indeed the modern imitators of Henry VIII have improved on his example. Sir Henry tells us what became of the invaluable libraries which formed the chief treasure of the suppressed monasteries:

Yet the desolation was so universal, that John Bale doth much lament the loss and spoil of books and libraries in his Epistle upon Leland's Journal, Leland being employed by the king to survey and preserve the choicest books in their libraries. If there had been in every shire of England (saith Bale) but one solemn library to the preservation of those noble works and preferment of good learning in our posterity, it had been yet somewhat; but to destroy all without consideration, it is, and will be unto England forever, a most horrible infamy amongst the grave seniors of other nations. Adding further, that they who got and purchased the religious houses at the dissolution of them, took the libraries as part of the bargain and booty,—reserving of those library books, some to serve their jakes, some to scour their candlesticks, and some to rub their boots, some they sold to the grocers and soapsellers, and some they sent over sea to the bookbinders; not in small numbers, but at times whole shipfuls, to the wondering of foreign nations. And after he also addeth, "I know a merchantman, which all this time shall be nameless, that bought the contents of two noble libraries for forty shillings each, a shame it is to be spoken: this stuff hath he occasioned instead of gray paper by the space of more than these ten years, and yet he hath enough for many years to come: a prodigious example is this, and to be abhorred of all men who love their nation as they should do." And well he might exclaim, "a prodigious example," it being a most wicked and detestable injury to religion and learning.[1]

[1] *History and Fate of Sacrilege*, p. 149.

Nowadays books are valued by others, as well as by monks and churchmen, and so the books found in the monasteries suppressed by the state in our day are placed in public libraries, and the duplicate copies are thrown on the market, much to the benefit of the book collector.

As the student of moral theology is aware, there are many difficult questions concerning the doctrine of sacrilege. Doctors are not agreed even upon the definition of the term. Sir Henry Spelman, who was deeply read in the scholastic theologians and canonists, defines it as—"an invading, stealing, or purloining from God, any sacred thing, either belonging to the majesty of His Person, or appropriate to the celebration of His divine service."[2] Thus there are two kinds of sacrilege; the first kind is committed "when the very Deity is invaded, profaned, or robbed of Its glory," says Sir Henry. And so the sin of Lucifer and his angels, of our first parents, of Cain, of those destroyed by the flood, of the builders of the tower of Babel, of Nimrod, and of others, was a sin of sacrilege. "In this high sin," he further says, "are blasphemers, sorcerers, witches, and enchanters; and as it maketh the greatest irruption into the glorious majesty of Almighty God, so it maketh also the greatest divorce betwixt God and man."[3] In other words, as modern theologians say, all sins against the virtue of religion may be called sacrilege in the wider sense of the term. In this sense it is not a specific sin, but rather a genus containing under it many different species of sin.

[2] *Ib.*, p. 1.

[3] *Ib.*, p. 2.

Sir Henry admits that this meaning of the term was not the common one with the schoolmen and canonists. "I come now," he says, "to the second part, which indeed is that which the schoolmen and canonists only call sacrilege, as though the former were of too high a nature to be expressed in the appellation: so exorbitant a sin, as that no name can properly comprehend it: *θεομαχία*, a warring against God, and *θεοβλαβέια*, a direful violence upon Divine Majesty, a superlative sacrilege."[4] In the strict sense of the term, the specific sin of sacrilege is "a violating, misusing, or a putting away of things consecrated or appropriated to divine service or worship of God: it hath many branches — time, persons, function, place: and materially. All (saith Thomas Aquinas) that pertains to irreverent treatment of holy things, pertains to the injury of God, and comes under the character of sacrilege. . . . Sacrilege of time is, when the sabbath or the Lord's day is abused or profaned: this God expressly punished in the stick-gatherer."[5]

Sir Henry had good authority for considering that sins committed on Sunday partake of the malice of sacrilege, as being a desecration of time set apart for the service of God; but he knew of the contrary opinion, for he adds, quoting Soto,—"Some canonists seem not to reckon this under the common kind of sacrilege. So that in all that followeth we shall run the broken way of the schoolmen and canonists."[6]

However, "the broken way of the schoolmen and canonists" is anything but straight or level at this

[4] *Ib.*, p. 12. [5] *Ib.*, p. 12. [6] *Ib.*, p. 13.

point. The great variety of opinions concerning particular cases of sacrilege shows that it is not easy to say what constitutes the essence of the sin in all cases. What sort of violation or misuse of the person is requisite for sacrilege? Why is not detraction of a person consecrated to God sacrilege? Why is not blasphemy, or any grave sin committed by a priest sacrilege, since it is a violation of one consecrated to God? Then, what is necessary to constitute a person consecrated to God? Will a private vow suffice, and if not, why not? What sins committed in church are sacrilegious?

Is it possible to explain the nature of sacrilege so that it will be easier to see our way toward giving satisfactory answers to such questions as the above?

When an object is dedicated to the service of God, it acquires thereby a new dignity, it is stamped with the seal of God, it enters in a sense into the sphere of the divine. As such it is only right and proper that it should be treated with a certain reverence and respect, which are due in the first place and in the highest degree to God Himself, and secondarily to all that in any special way belong to God.[7]

To treat such an object dedicated to God without due reverence will in some degree be an act of irreverence toward God Himself, and so in some degree sinful. Such an act is a fault against that obligation which binds all God's rational creatures to treat their Creator and all that in any special sense belong to Him with respect and deference. This motive St.

[7] S. Thomas, II., II., q. 99, a. 1.

Paul uses to exhort the Corinthians to avoid sin, especially sins of the flesh.[8]

The Christian is by Baptism dedicated and consecrated to the service of God; he is the temple of the Holy Spirit; he is under a special obligation not to defile himself by sin. Sin in such a one is a desecration, a violation of what has been devoted to God's service.

All this is perfectly true, but it is no more than saying that there is a special malice and deformity in sin committed by a Christian. That faculties and organs, which have been solemnly dedicated to the service of the All Holy, should be soiled by being employed in the service of the devil is a profaning of things sacred, and an act of disrespect to God to whom they belong.

In a still greater degree is there a special malice in the sins of a priest or of a religious. Both of these have received a special consecration to the service of God, over and above that by which they were dedicated to Him in Baptism. Both have consequently taken upon themselves special obligations of leading holy lives; sin is in a special manner unbecoming in them; it is a violation of what by so many titles belongs to God. However, this special malice which qualifies the sins of Christians, priests and religious, is to a greater or less degree common to all the sins which they commit. It is not a distinctive mark of any one sin, and so it cannot constitute the essence of the particular sin of sacrilege. At most it may be said that in a wide sense, the special consecration to

[8] I Cor. 3 : 16.

God by which Christians, priests and religious, are devoted to His service, makes their sins partake somewhat of the nature of sacrilege, in the sense in which St. Bernard said that unseemly joking in the mouth of a priest is sacrilege.[9]

All this seems to show that the special sin of sacrilege does not consist in the violation of a person or thing which only in some general way has been dedicated to the service of God. A certain irreverence, it is true, characterizes any improper use of such person or thing, and such irreverence, indirectly at least, affects God Himself; but this cannot constitute the special malice which differentiates the specific sin of sacrilege.

Here we are considering those objects which of themselves are not sacred. There are, it is true, some things, which of their own nature and by their very institution belong wholly to God's service, and have no other use but in His service. Such are the sacraments of the Church. They are the sacred means instituted by Christ for sanctifying the souls of men. They belong to the supernatural order by their very institution and aim. Any abuse of them is an act of disrespect to the God-Man who instituted them, it is a violation of that which by its very nature is holy. So that any abuse of the sacraments or the holy sacrifice of the Mass has in it all that constitutes the essence of sacrilege. There are, however, other objects which, although dedicated to God's service yet of their own nature do not belong to the sphere of the divine. They enter into the sphere of the divine by

[9] *De Consid.*, lb. II., c. 13.

the fact of their consecration. With regard to such objects, we have seen that the mere fact of their dedication in any general way is not of itself sufficient to cause any abuse of them to have the malice of the specific sin of sacrilege. Some other element is necessary for this. What is that element?

The answer to this question is indicated to us by the way in which persons, places and objects became holy and sacred under the Old Law. In the Book of Leviticus [10] we are told how Aaron and his sons were consecrated to the service of God by Moses in a public and solemn manner prescribed by God Himself. The various instruments and objects of divine service were also solemnly anointed and dedicated to their sacred purpose by God's own directions.[11]

They were thereby taken out of the category of things profane, and became holy, consecrated, to be touched and handled by no one who was not himself sanctified with special rites. The Temple with its divisions of various degrees of holiness, which implied various degrees of separation from things profane, and the very place on which the Temple was built, were dedicated in a solemn manner to God. By the act of consecration all the requisites of divine service were not merely dedicated to God, but they were publicly separated from the objects of everyday life; it was solemnly forbidden to treat them as objects of common use. The Temple was profaned and desecrated by the very entrance of the profane, the sacred vessels were profaned by common use, it was sacrilege for a non-consecrated person to presume to

[10] Leviticus 8. [11] Ex. 30:23.

fulfil the office of a priest. By the consecration then of things to the service of God by duly appointed ministers according to the prescribed form, those things became sacred in a special sense, and an obligation was laid upon all to treat them with special reverence, inasmuch as they had been thus dedicated to God.

It is difficult to see how such an obligation could arise, unless it were imposed in some such way by competent authority. This seems to be in the mind of Suarez, when he says that no private dedication of one's self to the worship of God is sufficient to make the person sacred, but that this effect must come from law.[12] When Laymann [13] and other theologians quote the Roman civil law in proof of this, they seem to appeal to the nature of things, and to reason and common sense.

In the dedication of persons, places, and objects to the worship of God, the Christian Church was guided partly by what her Divine Founder had commissioned her to do, partly by the analogy of the Old Dispensation, partly by the natural fitness of things. In all that she did in this matter, she used the authority given to her by God Himself. And so from the earliest times there were in use in the Church special rites and ceremonies, not only for the solemn consecration of her ministers, but for the consecration of virgins, and for the dedication to God of all that was required for divine service. Although a priest might give a simple blessing, the authority of a bishop

[12] *De Relig.*, tract. III., lb. 3, c. 2, n. 1.
[13] Lib. 14, tract. 10, c. 7, n. 2.

was usually required for the solemn consecration of things to God. For this, as under the Old Law, holy oil is commonly employed. And so we have the well-known distinction between *benedictiones invocativæ* and *benedictiones consecrativæ*. By the former, God's blessing is invoked on the use of those things which are blessed, such as the food we eat, but they do not become holy and sacred thereby; whereas, by the latter, things are made holy and sacred, they are perpetually dedicated to the service of God, and can never again revert to profane uses, as is expressly laid down by the fifty-first Rule of Law in the Sixth Book of the Decretals.

And so a private dedication to God by private authority is not sufficient to constitute persons, places, and things holy and sacred in such a manner that the special sin of sacrilege is committed by abuse of them. Public ecclesiastical authority is required for this, and ordinarily a public, solemn rite is used, approved by competent authority. The Pope, indeed, as supreme legislator in the Church of God, is not subject to the provisions of positive ecclesiastical law, and he can consecrate things to God, and make them sacred by a mere act of his will;[14] but subordinate ministers in the Church would seem to be bound to use the prescribed rites when they desire to consecrate things to God, and to make them sacred.

The particular aspect, too, in which an object is rendered sacred by consecration depends in great measure upon the intention of the Church. Thus by conferring minor orders, the Church makes the persons

[14] Lehmkuhl, *Theol. Mor.*, II., n. 586.

of clerics sacred in the sense that sacrilege is committed by bodily ill-treatment of them, but it is not sacrilege if they transgress the sixth commandment. On the other hand, sacred orders dedicate the cleric to the service of God by the observance of chastity, and sacrilege is committed by him if he violate that virtue.

It would appear, then, that if we prescind from things which of their own nature are holy and sacred, as for example, the sacraments, the holy sacrifice of the Mass, and the relics of the saints, and consider that larger class of objects which become sacred by consecration, the specific sin of sacrilege is a consequence of positive law. It is a transgression of the positive law which out of reverence for God, to whom the object has been solemnly dedicated in legal form, forbids certain actions with reference to that object. If those forbidden actions are performed, the sin of sacrilege is committed, a violation of a sacred object in that respect in which it has been made holy and sacred by the will and solemn dedication of the Church.

If this be the correct notion of sacrilege, it will be an easy matter to decide what particular sins fall under this specific head. To take the questions asked above: it is clear that detraction of a person consecrated to God is not sacrilege, because the Church has not specially forbidden that violation of his rights, moved thereto by the motive of reverence for God. For the same reason all grave sins committed by a priest are not so many sacrileges; but a violation of chastity, to the observance of which the Church has

specially dedicated him, is sacrilege, in the specific sense of the term. It is clear, too, that a private vow of chastity does not consecrate the person to God; the authority of the Church must come in, as it does in the vow of chastity taken in the reception of sacred orders, and in profession in a religious order approved by the Church. Again, not all sins committed in church will have the malice of sacrilege in the strict sense, but only those that have been specially forbidden by the Church out of reverence for the house of God. Under this head will come all those sins by which the immunity of a sacred place is infringed, or by which a church is violated, so as to need reconciliation in due form. Theft of property belonging to the Church, or intrusted to the Church's keeping, will be sacrilege, even though such property be not in itself sacred, because there is a law of the Church which specially forbids such theft, and makes it sacrilege.[15]

On the contrary, theft of a priest's private moneys will not be sacrilege for the opposite reason. Nor will all sins committed on the Sunday be sacrilege, for though that day be specially dedicated to God's service, yet there is no special law commanding us to keep the day holy by abstaining from all sin.

It will not be difficult to apply the same principles to other disputed cases, and if this be done, light will be thrown on some difficult questions of moral theology, and "the broken way of the schoolmen and canonists" will be made somewhat more straight and more level for the bewildered beginner.

[15] C. 3, C. XII., q. 2.

XX

IS AN ACT OF CONTRITION DIFFICULT?

In attempting to give an answer to this question I presuppose certain doctrines of Catholic faith. I presuppose that contrition is of such efficacy with God that an act of perfect contrition elicited from the motive of God's infinite goodness at once reconciles the sinner with God. This it does by virtue of perfect charity which contrition implicitly contains. I also presuppose that God seriously desires the salvation of all men, and in His Providence furnishes all with the means to obtain it. The question, then, is not merely one of speculative theology; it is exceedingly practical. For such as cannot receive the sacrament of Penance and yet have committed mortal sin an act of perfect contrition, or of perfect love of God, is the only means of salvation. Thus the question, whether an act of contrition is difficult or not is practically the same as the question whether it is difficult or not for the innumerable multitudes to obtain salvation who, for one reason or another, cannot receive the sacrament of Penance before death.

Some Catholic writers hold that it is not difficult, especially for Catholics, to make an act of perfect contrition. Among these is a German writer, the Rev. J. von den Driesch, whose little book on Perfect Contrition I was instrumental in putting into the

hands of English readers some years ago. However, this consoling doctrine seems to be contrary to the Catechism of the Council of Trent. This authoritative source of Catholic doctrine has the following passage concerning Contrition: —

> Contrition, it is true, blots out sin; but who is ignorant that to effect this it must be so intense, so ardent, so vehement, as to bear a proportion to the magnitude of the crimes which it effaces? This is a degree of contrition which few reach, and hence through perfect contrition alone very few indeed could hope to obtain the pardon of their sins.[1]

So, then, according to this authoritative source of Catholic teaching it is so difficult to make a perfect act of contrition that few make it, and very few, indeed, could hope to obtain the pardon of their sins by perfect contrition alone. However great the authority of the Catechism of the Council of Trent may be, it is well known that there are in it points of doctrine which have no greater weight than has a theological opinion. I may instance what the Catechism says about the necessity of confessing the circumstances of sin which only aggravate its malice, but do not change its nature. Is the above extract another such point in which one theological opinion is followed without depriving Catholics of the liberty to follow other and more consoling opinions if they choose to do so? Yes, it is, unless I am mistaken.

In proof of this contention I may observe, in the first place, that in the above extract the Catechism seems to require more than the common teaching of

[1] "On the Sacrament of Penance," Donovan's translation, p. 271.

Catholic schools requires. If the words be taken in their obvious sense they seem to require that an efficacious act of perfect contrition should be not only a detestation of sin above all other evils, but that it should also be in the highest degree intense. On the contrary, the common teaching nowadays is that no special degree of intensity is required in the act of contrition provided that it be a detestation of sin above all other evils for the love of God.[2] Indeed, the Catechism of the Council of Trent itself seems to teach the milder opinion in another place. There it says: —

> If, however, our contrition be not perfect, it may, nevertheless, be true and efficacious; for as things which fall under the senses frequently touch the heart more sensibly than things purely spiritual, it will sometimes happen that persons feel more intense sorrow for the death of their children than for the grievousness of their sins.[3]

So that, although supernatural contrition for sin may not be so intense as natural sorrow for the loss of a parent or husband or child, and so does not bear a proportion to the magnitude of the crimes which it effaces, nevertheless, it may, according to this extract, be true contrition and efficacious for the forgiveness of sin.

The presumed necessity of so great intensity, ardor, and vehemence is the reason why the Catechism teaches that very few indeed could hope to obtain the pardon of their sins through perfect contrition alone. If that reason is not well grounded it may still be

[2] See C. Pesch, *Praelectiones Dogmaticae*, vii., n. 137.

[3] Donovan's translation, p. 266.

difficult on account of the nature of the act of contrition or of the act of love which contrition implies. Of course both contrition and charity are acts of supernatural virtue, and as such they are not only difficult but utterly impossible without the help of God's grace. God must move the intellect and stir the will with His grace to make the least act of supernatural virtue possible to man. But this being supposed, is it difficult to make acts of contrition and charity, either because God rarely grants the requisite grace, or for some other reason?

To prepare the way for an attempted solution of this question, I would ask the reader to call to mind the close connection that exists between an act of contrition and an act of charity or love of God. The motive of contrition is God's infinite goodness, which is loved above all things, and which excites the sinner to hate sin above all other evils. So that wherever there is perfect contrition there is also perfect love. On the other hand, wherever there is perfect love and the consciousness that sin has been committed, it cannot be but that the love of God will move the sinner to detest sin above all things as being an offense of God whom it sovereignly loves. Contrition, then, and charity intermingle, as St. Francis of Sales teaches in his own inimitable way. He writes: —

> But I do not mean to say that the perfect love of God, by which we love Him above all things, always precedes this repentance, or that this repentance always precedes this love. For though it so often happens, still, at other times, as soon as divine love is born in our hearts, penitence is born within the love, and oftentimes penitence entering

into our hearts, love enters in penitence. And as when Esau was born, Jacob, his twin brother, held him by the foot, that their births might not only follow the one the other, but also might cleave together and be intermingled; so repentance, rude and rough in regard of its pain, is born first, as another Esau; and love, gentle and gracious as Jacob, holds him by the foot and cleaves unto him so closely that their birth is but one, since the end of the birth of repentance is the beginning of that of perfect love. Now as Esau first appeared, so repentance ordinarily makes itself to be seen before love, but love, as another Jacob, although the younger, afterwards subdues penitence, converting it into consolation.[4]

It would seem to follow from this that if contrition is difficult, an act of charity must be difficult; and if love is easy so must contrition be. The question, then, whether it is difficult to make an act of perfect contrition may be put in another way. We may ask: Is it difficult to make an act of the perfect love of God?

By the light of natural reason we can see in creation, and in ourselves, plenty of indications that our Creator is a good God who pours Himself out in loving goodness upon all things that He has made. He has given us the capacity to know and love Him, and He cannot but desire that we should do so. Indeed, we have a natural inclination to love God above all things. As St. Francis of Sales teaches:

Although now our human nature be not endowed with that original soundness and righteousness which the first man had in his creation, but on the contrary be greatly depraved by sin, yet still the holy inclination to love God

[4] *The Love of God*, Bk. II., c. 20.

above all things stays with us, as also the natural light by which we see His sovereign goodness to be more worthy of love than all things; and it is impossible that one thinking attentively upon God, yea even by natural reason only, should not feel a certain movement of love which the secret inclination of our nature excites in the bottom of our hearts by which at the first apprehension of this chief and sovereign object, the will is captured, and perceives itself stirred up to a complacency in it.[5]

In another place of the same treatise the Saint teaches that unbaptized pagans are quite capable of repentance for sin, because it offends God. He says: —

There is yet another penitence which is indeed moral, yet religious too, yea in some sort divine, proceeding from the natural knowledge which we have of our offending God by sin. For certainly many philosophers understood that to live virtuously was a thing agreeable to the divinity, and that consequently to live viciously was offensive to Him.[6]

But we must have recourse to revelation if we want to know the truth about divine love in all its fulness, beauty, and consoling sincerity. In innumerable passages of the Old and New Testaments God makes known His love for us in the most endearing expressions of human affection. In the most plaintive accents of wounded affection He pleads for our love in return. Almost in despair He tells us that the sum and substance of the Law and the Prophets is that we should love Him. This is the first and the greatest commandment. Foreseeing a possible excuse He as-

[5] *The Love of God*, Bk. I., c. 16.
[6] *Ibid.*, Bk. II, c. 18.

sures us on His own divine authority that it is not difficult to love Him: —

> This commandment, that I command thee this day, is not above thee, nor far off from thee; nor is it in heaven, that thou shouldst say: Which of us can go up to heaven to bring it unto us, and we may hear and fulfil it in work? Nor is it beyond the sea, that thou mayest excuse thyself and say: Which of us can cross the sea, and bring it unto us, that we may hear and do that which is commanded? But the word is very nigh unto thee, in thy mouth and in thy heart, that thou mayest do it. . . . That thou mayest love the Lord thy God.[7]

Before the institution of the sacrament of Penance, while perfect contrition was still the only means by which the sinner could be saved, God sent this message by His prophet: —

> Thus you have spoken, saying: Our iniquities and our sins are upon us, and we pine away in them: how, then, can we live? Say to them: As I live saith the Lord God, I desire not the death of the wicked, but that the wicked turn from his way, and live. Turn ye, turn ye from your evil ways; and why will you die, O house of Israel?[8]

All this is from the Old Testament, the law of fear, and much more could be quoted to the same effect. It would be unmeaning if an act of contrition and of love were so difficult that few could reach it, and if very few, indeed, could hope to obtain the pardon of their sins through perfect contrition alone. That was the only means available for obtaining forgiveness of sin under the Old Law. Under the New Law,

[7] Deuteronomy 30: 11–16. [8] Ezechiel 33: 10, 11.

the law of love cast out the law of fear, and it became much easier to love God and to be reconciled with Him. We have far more abundant grace, and in the easy task of knowing and loving Jesus Christ we fulfil the precept of knowing and loving God. As St. Francis of Sales says: —

> The sweet Jesus, who bought us with His blood, is infinitely desirous that we should love Him, that we may eternally be saved, and desires we may be saved that we may love Him eternally; His love tending to our salvation, and our salvation to His love. Ah! said He: *I came to cast fire on the earth and what will I but that it be kindled.* . . . That the commandment of love may be fulfilled, He leaves no living man without furnishing him abundantly with all means requisite thereto. God not only gives us a simple sufficiency of means to love Him, and in loving Him to save ourselves, but also a rich, ample, and magnificent sufficiency, and such as ought to be expected from so great a bounty as His.[9]

According to the same great Doctor of Divine Love, when Our Lord sees a soul fall into sin He runs to its assistance: —

> Seeing it is not now necessary that He should employ His love in dying for us, when He sees the soul overthrown by sin He commonly runs to her succor, and by an unspeakable mercy lays open the door of her heart by the stings and remorses of conscience which come from the divers lights and inspirations which He puts into our hearts, with salutary movements, with which He makes the soul return to herself, and brings her back to good sentiments. And all this God works in us without our action, by His all amiable goodness, which prevents us

[9] *The Love of God*, Bk. II, c. 8.

with its sweetness. . . . The soul would remain lost in her sin, if God prevented her not. But if the soul thus excited add her consent to the solicitation of grace, seconding the inspiration which prevents her, and accepting the required helps provided for her by God, He will fortify her, and conduct her through various movements of faith, hope, and penitence, even till He restore her to her true spiritual health, which is no other thing than charity.[10]

The bold metaphor of the poet in the *Hound of Heaven* is amply justified by Catholic theology: —

> Nigh and nigh draws the chase,
> With unperturbèd pace,
> Deliberate speed, majestic instancy;
> And past those noised Feet
> A voice comes yet more fleet—
> "Lo! naught contents thee, who content'st not Me!"

All that the human soul, even though stained with sin, has to do in order to be again united to God by love and contrition, is to yield her consent to the insistent pleadings of her divine Lover.

At the request of His apostles, Our Lord furnished them and us with a set form of prayer suitable for ordinary and common use. The very first petition of the Our Father is an act of perfect love of God, as St. Thomas of Aquin and other theologians teach. Would not the Our Father be unsuited for common and ordinary use if so few could mean what they say while using it? And yet few could mean what they say, if few can make an act of love and contrition. No wonder, then, if Saint Jure, in his classical work on

[10] *The Love of God*, Bk. III., c. 3.

the *Knowledge and Love of Jesus Christ* asserts that it is easy to love God above all things. He writes: —

Since it is commanded it is possible. We will go further and we will say that it is not only possible but that it is easy. If it was easy for the Jews under the law of fear and severity, is it not still more easy for Christians under the law of grace and love?[11]

The Ven. Robert Southwell, S.J., the martyr, holds that it is so easy to practise divine love that no one can excuse himself from practising it: —

All men are able to love Thee, O Lord, wise men and fools, rich and poor, little and great, young and old, men and women, and to every estate and to every age, love is common; no man is weak or feeble, no man is poor, no man is old to love. . . . If any man should say that he cannot fast, or that he cannot give alms, or that he cannot go to Mass, we ought to believe him, but can any man say that he cannot love? This is impossible.[12]

The Rev. J. von den Dresch maintains that Catholics often have perfect contrition without knowing it or thinking of it; for example, while devoutly hearing Mass, while making the Stations of the Cross, while piously contemplating a crucifix, or a picture of the Sacred Heart, while listening to a sermon, and so forth.[13] Many priests, I think, especially if they work among the poor of Christ, would maintain the same. Finally, St. Francis of Sales writes: —

While we are little children, we are wise like little children, we speak like little children, we love like little

[11] *De la Connaissance et de l'amour de Notre Seigneur Jesus-Christ*, liv. i., c. 14.

[12] *A Hundred Meditations on the Love of God*, p. 298.

[13] *Perfect Contrition*, p. 15.

children; but when we shall come to our perfect growth, there above in heaven, we shall be freed from our state of infancy, and love God perfectly. Yet we are not for all this, during this infancy of our mortal life, to omit to do what in us lies according as we are commanded, since this is not only in our power, but is also very easy; the whole commandment being of love, and of the love of God, who as He is sovereignly good, so is He sovereignly amiable.[14]

So that when the Catechism of the Council of Trent teaches that few reach the intensity required for a perfect act of contrition, and that very few, indeed, could hope to obtain the pardon of their sins by perfect contrition alone, it does not teach what is of faith but of opinion only. Catholics, then, are free to follow other opinions which are more consoling, and, as it seems to us, redound more to the honor and glory of God.

Nor do I feel that my withers are wrung by what Father Faber says in his work on the *Blessed Sacrament.* He gives the quotation from the Catechism of the Council of Trent on which I have been commenting in a footnote, and on this he supports the following sentences in the text: —

Earth has no privilege equal to that of being a member of His Church; and they dishonor both it and Him who extenuate the dismal horrors of that outer darkness in which souls lie that are aliens from the Church. The greatness of our privilege, and, therefore, of the glory of the Sacraments, is necessarily diminished by anything that makes less of the unutterable miseries, and most appalling difficulties of salvation outside the Church. This is the reason why the Saints have ever been so strong in the in-

[14] *The Love of God,* Bk. X., c. 2.

stincts of their sanctity, as to the wide, weltering, almost hopeless deluge which covers the ruined earth outside the ark. Harsh, to unintelligent, uncharitable kindness, intolerably harsh, as are the judgments of stern theology, the saints have ever felt and spoken more strongly and more peremptorily than the theologians.[15]

The judgments of stern theology without doubt may sometimes appear harsh, especially to unintelligent and uncharitable kindness. But, before teaching that any particular doctrine which has the appearance even of harshness is a judgment of stern theology we should make sure of the fact. Unless we do this we shall be in danger of dishonoring God and hindering the salvation of souls by mistaking an opinion for the truth. The truth cannot diminish the glory of the sacraments nor the value of the privilege of belonging to the True Church. It is a truth that God seriously desires the salvation of all men, and that, therefore, He has provided sufficient means for all men to be saved. It is a truth that no one is lost except by his own fault. Contrition and perfect charity are the only means of salvation for such as cannot receive the sacraments. The dismal lot of those outside the Church should never be extenuated, but we must never forget that all those who are lost are lost because they would not make use of their free will to be saved, not because God has not provided sufficient and superabundant means of salvation for all. *Copiosa apud eum redemptio.*

It would hardly be just to the memory of Father Faber to leave the reader under the impression that

[15] *The Blessed Sacrament*, Bk. IV., c. 5.

the above extract expresses his settled conviction on the matter. It is true that I do not remember any passage in his writings which expressly contradicts the extract given above. But in *All for Jesus* he lays stress on the necessary connection between love and sorrow for sin in these words: —

> What I mean is this, that to sorrow over the sins of others is no far-fetched devotion, or subtle refinement of religious feeling; but that it follows inevitably upon the love of God. Where there is no such sorrow for sin, either in ourselves or others, there is no love of God; and in proportion to the amount of love will the degree of sorrow be.[16]

In his *Creator and Creature* and elsewhere he treats of God's infinite love for us, and of our obligation to love Him in return. He shows at length, with his usual eloquence and unction, how this obligation may be fulfilled, and he teaches that its fulfilment is easy. He says: —

> Every creature was created by God for God's own sake. Hence he has nothing to do but God's work, nothing to seek but God's glory; and that work and that glory God has been pleased to repose in love, in the easy service of a rational and yet supernatural love.[17]

I think that these passages show that the real Father Faber was not opposed to my contention, that it is not difficult to make an act of perfect contrition or of the pure love of God.

[16] *Op. cit.*, p. 58.

[17] *Op. cit.*, Bk. II., c. 3

XXI

REPETITION OF EXTREME UNCTION

Few of those who have devoted any attention to the matter will differ from the main conclusion at which Dr. Toner arrived in his article on this subject in the April number of the *Theological Quarterly*. That conclusion was that it is a solidly probable opinion that Extreme Unction may be validly repeated on the same person in the same sickness even though there has been no change in the state of the sickness. Dr. Toner, of course, admitted that such a proceeding would be contrary to present discipline. But present discipline, he maintains, defers to the common opinion among theologians that Extreme Unction cannot be validly administered to a sick person as long as he remains in the same state of sickness. Some would seem to look forward to a change of discipline in this matter if only the common opinion can be dislodged.

I think something may be said concerning this supposed common opinion and concerning the desirability of a change of discipline, and so I will accept Dr. Toner's courteous invitation to discuss these two points in the following article.

I do not think that, at any rate since the time of Benedict XIV, it can be said that the common opinion of theologians has been against the validity of a

repetition of Extreme Unction in the same state of the same sickness. There can hardly be question about the opinion of Benedict XIV himself. Catalanus dedicated his commentaries on the Roman Ritual to him. With rather fulsome flattery he says in the Dedicatory Epistle that he has altogether neglected the Casuists, who, he asserts, have for the most part done no little injury to Christian discipline and morality by their lax, foolish, and erroneous opinions about the sacraments and their administration. He professes to have derived much of his information from the synodal Acts of St. Charles Borromeo and from what Benedict XIV himself has most wisely taught in his most renowned work, *De Synodo Dioecesana*. If we turn to his commentary on the rubric which prescribes that Extreme Unction should not be repeated in the same sickness unless it is protracted, so that after recovery the sick person falls again into the danger of death, we find that Catalanus has the following: —"An eodem morbo, eodemque infirmitatis statu durante, iterari Extrema Unctio possit, nec Tridentinum Concilium, nec ejus Catechismus determinarunt, quod id scirent pendere a disciplina, uti notavit Van Espen." So that, according to Catalanus, it is merely a question of discipline whether Extreme Unction should be repeated or not during the same dangerous state of the same sickness. If now we turn to the *De Synodo* of Catalanus' patron we there find that Benedict XIV had before his mind practically all the evidence on this question which we possess to-day. He says that there used to be a variety of opinions on the point. Some held in the

eleventh and twelfth centuries that Extreme Unction can only be received once lawfully in a lifetime; others later on maintained that it could not lawfully be received oftener than once a year; while others held that it could be repeated often in the same sickness, and that in early times it was repeated on seven successive days. Then the learned Pontiff adds: — "Sed *usus* postea ab universa Ecclesia receptus, a theologis communi calculo approbatus, et Synodorum ac Ritualium auctoritate roboratus, obtinuit, ut semel dumtaxat, in eadem infirmitate Extrema Unctio adhibeatur: una siquidem necessarias suppeditat vires ad illa incommoda evitanda, quæ morbus affert quo actu aeger laborat. . . . Durante autem eadem infirmitate, si post susceptam Extremam Unctionem morbus ita remittat ut ægrotus mortis periculum evasisse videatur, sed antequam convalescat iterum in vitæ discrimen relabatur, etiam *juxta præsentem disciplinam* poterit absque scrupulo denuo sacra Unctione muniri; . . . uti videre est apud citatum Van Espen, qui non inopportune Parochos monet ne nimium scrupulose in hoc se gerant; sed si dubitent an revera morbi status sit mutatus, seu num idem vel diversum sit vitæ periculum in quo ægrotus versatur, expedire ait ut ad Sacramenti iterationem propendeant, eo quod hæc iteratio conformior sit veteri Ecclesiæ consuetudini, et per eam novum spirituale subsidium et levamen infirmo obveniat." [1] Although in these passages Benedict XIV does not expressly say that Extreme Unction can be repeated validly during the continuance of the same danger in the same

[1] *Lib.* VIII., c. 8, n. 4.

sickness, it is plain that he regards the whole question as one of mere discipline, as Catalanus expressly says that it is. He attributes the present rule on the subject to the *usus ab universa Ecclesia receptus;* he refers to it as *juxta præsentem disciplinam;* and he approves of the advice of Van Espen to parish priests that they should not be too scrupulous about repeating Extreme Unction. In case of doubt, he says, whether the state of the sickness has changed or remains the same, or whether the danger of death is different or not, it is well to lean to a repetition of the sacrament, because such a repetition is more in keeping with the ancient practice of the Church, and thereby new spiritual help and consolation is given to the sick person. It is to be observed that Benedict XIV could hardly have written in this way if he had thought that the opinion was even probable that Extreme Unction cannot validly be administered during the same state of the same sickness. For such an opinion would touch the valid administration of a sacrament, and we may not, except in case of necessity of which there can be no question here, use a merely probable opinion concerning the validity of a sacrament. What we read in Dr. Heiner's recently published *Opera inedita* of Benedict XIV throws additional light on the Pontiff's opinion on this question. Referring to the Greek practice, according to which several priests together administer Extreme Unction, he says: —" Conosciamo che imbevuti i Teologi Latini della massima di non ripetere nella stessa malattia l'Estrema Unzione, vedono mal volentieri che i Sacerdoti chiamati per amministrare quel Sac-

ramento, ungono uno dopo l'altro ciaschedun membro che deve ungersi, proferendo ciaschedun d'essi nell' ungere le parole della forma, valutando cio per contrario al loro sistema, e come una vera piu volte ripetita amministrazione dell' Estrema Unzione. Ma per andare al riparo di questo, che credono grave inconveniente," &c.[2] It is clear, I think, from this extract that Benedict XIV himself did not think much of the difficulty felt by many theologians about the repetition of the sacrament of Extreme Unction. This conviction will be strengthened if we quote here the words of Van Espen to which Benedict XIV refers. Van Espen says: —" In his itaque unusquisque Ecclesiæ suæ legem et consuetudinem sequi debet; alias si disciplina non obstaret, absurdum non esset, pluries in eadem etiam infirmitate eodemque infirmitatis statu, hoc sacramentum juxta antiquum Ecclesiæ Latinæ et hodiernum Græcorum morem conferre. . . . Ex his discat parochus, ab iteratione hujus sacramenti se non debere scrupulose abstinere ob periculum nullitatis sacramenti; sed duntaxat, ne in disciplinam jam stabilitam impingat: adeoque si *dubium* sit, num forsan morbi status ita fuerit mutatus, ut etiam juxta modernam disciplinam reiterari queat, magis pro reiteratione inclinandum; eo quod hæc reiteratio conformior sit veteri Ecclesiæ consuetudini, tum quod per eam novum ipsi infirmo subsidium spirituale sperari possit." [3] There we have the definite reason assigned why a parish priest need not be scrupulous about repeating this sacrament

[2] Page 367.

[3] *De Extrema Unctione*, c. III., nn. 39, 40.

when he is in doubt whether the sick man is in the same danger of death; it is merely a question of discipline, there is no doubt about the validity of the sacrament.

The theologians who have written on Extreme Unction since the time of Benedict XIV have for the most part been content to quote his doctrine on the question before us. Many of them like Sardagna and Voit merely synopsize the Pope's teaching. Very few of them, as far as I have seen, face the question whether a repetition of Extreme Unction in the same danger of death would be valid or not. They say that it cannot be repeated in the same state of the same sickness, and quote the Council of Trent and the Ritual in proof of this doctrine, but they do not as a rule discuss the question whether such a repetition would be invalid as well as unlawful. Still the great majority imply at least that it is only a question of discipline. St. Alphonsus may be taken as the representative of the moralists. He quotes the doctrine of Benedict XIV given above, and then explains it by saying that there must be a positive doubt, or a probable opinion, that the sick person is in a new danger of death before Extreme Unction can be repeated, otherwise, he says, in mere negative doubt the precept of Trent must be observed. These words show that St. Alphonsus understood the question of the iteration of this sacrament to be merely disciplinary, and that there could be no question about the validity of the sacrament, as otherwise it would not be lawful to follow a probable opinion concerning its administration.

The Wirceburgenses, whom we may take as representatives of the dogmatic theologians of the latter half of the eighteenth century, teach that Extreme Unction is one of the sacraments which may be repeated since it does not impress a character on the soul. They mention the fact that formerly this sacrament was repeated during the same dangerous state of the same illness, but in the words of Benedict XIV they add that for many centuries the practice of the Church has been that it should only be administered once during the same danger of death arising from the same sickness.

Collet, who wrote about the same time as the Wirceburgenses, says:—"Unctio pluries conferri valet. Quin et olim in eodem morbo iterabatur; quod hodie fieri prohibitum est, nisi ægritudo physice vel moraliter diversa sit."[4]

Billuart, a few years earlier, wrote:—"Quidquid sit de consuetudine quæ dicitur olim apud aliquos invaluisse pluries iterandi unctiones in eodem infirmitatis statu . . . certum est nunc non licere." Tom. xix., p. 51.

Reuter says:—"In eodem tamen morbo et statu sæpius per se loquendo suscipere non licet; secus in diversis." Pt. IV., Tract. vi., q. 3.

All these are among the best and most representative theologians of the latter half of the eighteenth century; they were in common use in the nineteenth as they are still in the twentieth. It can hardly be said, I think, that the facts brought to light by the great historical theologians of the seventeenth and

[4] *De Extrema Unctione*, n. 20.

eighteenth centuries about the administration of Extreme Unction fell into oblivion during the latter half of the eighteenth and the beginning of the nineteenth century. There are, indeed, two or three theologians of this period who teach that the repetition of Extreme Unction in the same danger of death is invalid. Sasserath is one of these, who says: — "Eodem autem mortis periculo perseverante etiam invalide iteratur, ut cum aliquibus tenet Bosco." [5]

But neither Sasserath nor Bosco are in the front rank of theologians.

In the period before the time of Benedict XIV there were more theologians of note who taught that during the same danger of death Extreme Unction cannot be repeated validly. Among these are La Croix, G. Hurtado, Sporer, and Herincx, and the three last assert that this was the common opinion of Doctors. The words of Benedict XIV, which were quoted above, indicate the same, and so we may allow that before the time of Benedict XIV the view was commonly accepted that this sacrament cannot validly be repeated in the same danger of death. Most of the theologians of this period whom I have consulted do not expressly teach either one view or the other. Suarez, for example, says: —"Hinc ergo fit [quia non imprimit characterem] ut sacramentum hoc simpliciter et absolute sit iterabile . . . secundum quid seu durante ejusdem morbi necessitate sacramentum hoc non posse iterari." [6]

How unsafe it would be to conclude from these

[5] *De Extrema Unctione*, n. 12.

[6] Disp. 40, sec. 5.

last words that Suarez held that Extreme Unction cannot be repeated validly in the same danger is shown by what Arriaga wrote a little later. He uses the same words as Suarez — "Durante eodem periculo vitæ non posse iterari" — but he adds: — "Ubi adhuc nova quæstio esse potest, An ita non possit bis dari intra idem periculum ut id sit solum illicitum; an vero ita ut sit etiam invalidum, seu irritum sacramentum, ex defectu capacitatis in subjecto. Respondeo, rem esse omnino incertam, quia de hoc puncto nihil Concilia definierunt."[7] He thinks, however, that if the question could be settled by the practice of the Church, we should have to conclude that a repetition of this sacrament in the same danger of death would be invalid.

If, however, we go back to the eleventh and twelfth centuries we shall find ourselves confronted with two opposite opinions and practices on the point at issue. One maintained that Extreme Unction could not be administered twice to the same person, any more than the anointing in Baptism, or the priesthood, or the consecration of a church or chalice could be repeated. The other, apparently much more common than the first, simply and without distinction, held that Extreme Unction was of the number of the sacraments that could be repeated. Peter Lombard held this view. His words are: —

"Sacramentum vero altaris, et poenitentiæ et conjugii sæpe iterari videntur, quia sæpe sacramentum corporis suscipitur, frequenter poenitentia agitur, conjugium sæpe contrahitur. Quare ergo unctio

[7] *De Extrema Unctione*, disp. 53, n. 47.

similiter non potest iterari? Si morbus non revertitur, medicina non iteretur. Si vero morbus non potest cohiberi, quare medicina debet prohiberi? Sicut oratio iterari potest, ita et unctio iterari posse videtur: utraque enim illic commemorat Jacobus, et utrumque alteri cooperatur ad conferendam alleviationem corporis et animæ. Cur ergo negatur unctionem super infirmum posse iterari, ad impetrandam sæpius sanitatem mentis et corporis, cum propter infirmitatem eadem sæpe iteranda sit oratio? . . . Si vero ad susceptionem sacramenti: de quibusdam verum est, quod non iterantur crebra susceptione, de aliis vero quibusdam non: quia frequenter sumuntur, ut hoc unctionis sacramentum quod in omni pene Ecclesia sæpe repetitur." [8]

His argument, therefore, is that doses of medicine are repeated until either the disease is conquered or it conquers the patient; prayer for health is repeated, why should not the unction also be repeated. The holy oil indeed is not consecrated twice, but as the same subject can repeatedly receive Penance, and the Eucharist, so this sacrament of Extreme Unction can be often received, and in fact in almost all the Churches it is frequently repeated.

Albert the Great, seeking to apply the well-known rule of law, discovered a distinction by means of which he reconciled the two opposite opinions. "Dicendum," he says, "quod hoc sacramentum sicut cetera quædam iteratur, si causa eorum iteratur: sicut expresse dicit Augustinus in litera, Si morbus non revertitur, medicina non iteretur. Si vero mor-

[8] *Lib.* IV., dist. 23.

bus non potest cohiberi, quare medicina debet prohiberi? Ad primum ergo dicendum, quod non fit injuria sacramento, quando iteratur super idem subjectum, sed quando iteratur super eandem causam numero: unde illa sacramenta quæ habent causas suas immobiles non iterantur, ut baptismus quia originale nunquam redit, et confirmatio, quia debilitas ex fomite nunquam redit. Similiter privatio potestatis Ecclesiasticæ nunquam redit in eo qui suscipit ordinem: et ideo illa nunquam iterantur. Quædam autem habent causas mobiles super idem subjectum; et ideo in eodem homine iterantur, licet non eadem de causa. Et per hanc solutionem patet qualiter concordandæ sunt ambæ opiniones quæ recitantur in litera, et patet solutio ad ultimum."[9]

To the difficulty about prolonged sickness where the cause seems to be always numerically the same, and, therefore, according to his distinction the sacrament should not be repeated, Albert, not without serious doubts and misgivings, applies a physical theory of the time. The four humors of the human body were thought to undergo a change during the progress of the four seasons, and so after a year's interval the sickness could not be the same. Extreme Unction, therefore, might be repeated after a year's interval. Later theologians have sometimes laughed at Albert's application of physics, as he understood the science, to theology. Too many of them have failed to learn caution from his example, and like him they have tried to solve theological questions by the application of the philosophical or physical theories

[9] In 4 *Lib., Sent.* XXIII., art. 20.

of their time. Almost up to the period of the Council of Trent many local synods in France and in England applied Blessed Albert's rule in practice and forbade the administration of Extreme Unction to the same person oftener than once a year. St. Thomas, the great disciple of Albert, saw what was sound in the distinction of his master and put it in a truer light. He teaches that this sacrament may be repeated inasmuch as it does not produce an effect which is perpetual. This may be done even in the same sickness when the danger of death ceases and returns again.

"Respondeo dicendum quod hoc sacramentum non respicit tantum infirmitatem, sed etiam infirmitatis statum: quia non debet dari nisi infirmis qui secundum humanam æstimationem videntur morti appropinquare. Quædam autem infirmitates non sunt diuturnæ: unde si in eis datur hoc sacramentum tunc quando homo ad statum illum pervenit quod sit in periculo mortis, non recedit a statu illo nisi infirmitate curata: et ita non debet iterum inungi. Sed si recidivum patiatur, erit alia infirmitas; et poterit fieri, alia inunctio. Quædam vero sunt ægritudines diuturnæ, ut hectica, hydropisis, et hujusmodi: et in talibus non debet fieri unctio nisi quando videntur perducere ad periculum mortis: et si homo illum articulum evadat, eadem infirmitate durante, et iterum ad similem statum per illam ægritudinem reducatur, iterum potest inungi, quia jam quasi est alius infirmitatis status, quamvis non sit alia infirmitas simpliciter." [10]

[10] *Summa theol. Supplementum*, q. 33, a. 2.

St. Bonaventure agrees with St. Thomas on this question. The teaching of St. Thomas and St. Bonaventure became the common doctrine of the schools, and it was adopted by the Council of Trent and the Roman Ritual. It is not a mere compromise between two opposite views. It is grounded on the nature and effects of the sacrament with which it deals. For Extreme Unction is a sacrament instituted for the benefit of those who are dangerously ill, of those who are in danger of death from sickness. So that it produces its effects whenever the recipient of it is reasonably presumed to be in danger of death. Those effects are many and various; Extreme Unction infuses sanctifying grace into the soul, it removes the remains of sin, it forgives venial sin and sometimes even mortal sin, it cheers, soothes, consoles the sick person, and if God sees good it restores him to bodily health. The effects which are peculiar to this sacrament are the cheering, soothing, consoling of the sick person, and at times the restoration of his bodily health. The other effects are common to other sacraments, and more properly belong to them, especially to Penance, of which Extreme Unction is the complement. If remission of sin or an increase of sanctifying grace is desired, it will be better for the sick person to go to confession or receive holy communion again. There is no necessity for him to receive Extreme Unction again in the same danger of death in order to obtain the special fruits of this sacrament. The reason is because those special fruits are in the nature of actual graces and favors which are not necessarily given immediately on re-

ceiving this sacrament, but the reception of the sacrament gives the recipient the right to receive them at suitable times during his sickness. As long as the same danger lasts the sacrament once received gives him a title to receive its special effects; a repetition of the sacrament could not do more for him in this respect. This does not prove that a repetition of Extreme Unction in the same danger would be invalid, but it does show that it is not necessary. Indeed Extreme Unction is not a necessary means of salvation at all, nor is its reception by the sick a matter of precept; but the above argument shows that its repetition is not even necessary in order to procure its special effects during the same dangerous state of illness, and its other effects can be more satisfactorily obtained in other ways.

The doctrine which has just been laid down does not, I think, differ in substance from that of Richard Middleton (Mediavilla), the celebrated Minorite of the thirteenth century. In his commentary on the Sentences he says: —

"Respondeo quod hoc sacramentum aliquo modo iterabile est, aliquo modo non. Circa enim eundem infirmum eadem infirmitate in numero respectu ejusdem infirmitatis status iterari non debet. Quia quodlibet sacramentum circa materiam propriam una vice sortitur totum suum effectum si non sit indispositio in suscipiente. Et ideo eadem hostia bis non consecratur quia in prima consecratione efficitur corpus Christi verum sub una specie, nec idem conjuges bis desponsantur. De baptismo, confirmatione, ordine clarum est. In solo sacramento poenitentiæ

dubium est quandoquidem respectu eorumdem peccatorum in numero iteratum qualibet vice haberet aliquem effectum. Quia tamen idem homo in numero potest pluries infirmari et in eadem infirmitate in numero possunt esse status diversi in quorum quolibet infirmus est in notabili et probabili periculo mortis, ideo cum infirmo nullum imprimat indelebilem effectum potest et debet eidem homini pluries conferri vel pro diversis infirmitatibus vel pro ejusdem infirmitatis diversis statibus supradictis. Nec te moveat quod dictum est sacramentum Eucharistiæ una vice circa eamdem materiam totum suum sortiri effectum, quia ab eodem homine est pluries suscipendum. In ejus enim susceptione non consistit illius sacramenti essentia, et ideo quamvis pluries suscipiatur et in eodem suscipiente pluries habeat effectum tamen essentia sacramenti circa eamdem materiam non iteratur, et iteratum non haberet effectum. . . . Et quia circa eundem infirmum eadem infirmitate respectu ejusdem infirmitatis status hoc sacramentum totum suum sortitur effectum si non sit aliquis defectus ex parte suscipientis ideo hoc modo non iteratur." [11]

This, then, is the doctrine on which the modern discipline regarding the repetition of Extreme Unction is grounded. It would seem to show that no change in that discipline is desirable, and if taken together with certain other reasons it will, I think, explain why the historical investigations of such men as Launoi, Van Espen, and others brought about no

[11] In *Lib.* IV., dist. 23, a. 2, q. 6.

change of discipline in the administration of Extreme Unction.

For it is not difficult to discover the reasons why Extreme Unction was administered less frequently than perhaps it might have been during the Middle Ages. Sometimes bishops forbade its too frequent reception in the same sickness lest it should come to be held in too little esteem and reverence. Thus Stephen Poucher, Archbishop of Sens, issued the following decree in 1514: —

"Cavere debent sacerdotes, ne aliquis infirmus sæpius inungatur in eadem infirmitate, ne sacramentum istud vilescat; potest tamen iterari hoc sacramentum in diversis infirmitatibus vel in eadem recidiva, quia non habet effectum perpetuum, eo quod sanitas mentis et corporis quæ sunt ejus effectus, reiterari possunt, et amitti, et recuperari."

A similar decree couched in the same words was issued by Louis, Bishop of Chartres, in 1524, and the authority of the Holy Fathers was claimed for it — *Juxta sanctorum Patrum decreta.*[12]

This reason for not repeating Extreme Unction is not without its weight still. The Church even now forbids holy communion oftener than once a day, and some priests think that in some places the sacrament of Penance is beginning to lose something of its efficacy as a remedy against sin from its too frequent repetition without due preparation. Besides, it is only right that the priest should be considered. In populous districts, where each priest not unfre-

[12] Launoi, *De sacram. Unctionis*, I., p. 552.

quently has two or three thousand souls to look after, there may easily be half a dozen who are in danger of death at the same time. Even under modern discipline the administration of the last sacraments to the sick makes a serious demand on the time of the overburdened priest. What would be the case if each sick person demanded Extreme Unction every day?

Another reason why Extreme Unction came to be administered less frequently than it might have been was the avarice of the clergy. Benedict XIV conjectured that this was the reason why the ancient custom of employing several priests in its administration fell into desuetude. Each priest required his fee, and the poor began to speak of Extreme Unction as the sacrament of the rich. It was doubtless on this ground that we find many English synods prescribing that this sacrament should be administered without fee by the parish priest. Thus, among the decrees of the Synod of Exeter held under Peter Quivil in the year 1287, we read the following: —

"Qui si difficiles se exhibuerint in hac parte, et infirmis poenitentibus et petentibus gratis absque ulla exactione pecuniæ sacramentum hoc non contulerint cum gratia sit gratis data et non pretio conferenda, convicti super hoc, juxta canonicas sanctiones punientur condigne." [13]

Other councils made similar provisions, as that held at Durham about the year 1220, and another held a little later in Scotland.[14]

In our days Extreme Unction is administered with-

[13] Wilkins, *Concilia*, II., p. 135.
[14] Wilkins, I., pp. 583, 615.

out fee, and so, perhaps, there would not be much danger on this head if it were more frequently received. Still the means which have been found useful in other ages for the suppression of abuses may sometimes be retained as the best means of preventing their coming back to life.

But the chief reason for not repeating Extreme Unction more frequently seems to have been the repugnance of the people themselves. Even nowadays we come across instances of this strange repugnance to receive the sacrament of healing and consolation. I could mention instances of this feeling which have occurred within my own recollection, not only among the poor and ignorant but also among the well-to-do and educated. The synods of the Middle Ages mention several curious superstitions connected with this feeling, which it required all the authority of the Church to correct. Thus Walter of Cantilupe, Bishop of Worcester, held a synod in 1240 and made the following decree among others: —

"Sunt autem quidam, ut audivimus, qui post perceptionem hujusmodi sacramenti, sanitati pristinæ restituti nefas reputant, vel uxores suas cognoscere, vel carnes comedere, vel etiam aliqua ratione nudis pedibus ambulare. Horum autem errorem, utpote doctrinæ sanæ contrarium, execramur, et eos communicationibus, et monitionibus duximus corrigendos, quia ferro abscindenda sunt vulnera, quæ fomenta non capiunt, ecclesiastica coercione, si necesse fuerit, præcipimus per sacerdotes eorum ab his erroribus revocari. Quidam etiam in tantum abhorrent hoc percipere sacramentum, quod hoc sibi vix in

solo mortis articulo sustinent exhiberi; propter quod forsan accidit quod ejus expertes plurimi ab hac luce subtrahuntur. Contra hunc igitur errorem cum aliis, eos per sacerdotes suos et prædicatores alios, crebris exhortationibus præcipimus præmuniri." [15]

Mention is made of similar superstitions in many synods held both in England and in other countries, so that they were widespread and difficult to eradicate.[16] This strange repugnance of the people against the reception of Extreme Unction, together with the doctrine of Albertus Magnus, may have had its weight in inducing various synods and bishops in the Middle Ages to make laws prohibiting the reception of this sacrament oftener than once a year. Launoi mentions nine diocesan rituals which contained such a prohibition, and to these we may add the synodal decree of Raynold, Archbishop of Canterbury, in the early part of the fourteenth century, which Lyndwood, at the end of the next century, inserted in his *Provinciale* and glossed. This shows that it was still in force at the eve of the Reformation in England.

These decrees may, perhaps, be regarded as a compromise between two extremes. They rightly insist on the doctrine that Extreme Unction may be repeated, but they prescribe that it should not be repeated in favor of the same person in the same sickness oftener than once a year. It seems to me, then, that if we bear in mind the special effects of Extreme Unction and the experience of the past, we shall not

[15] Wilkins, I., p. 670.

[16] *Cf.* Wilkins, I., pp. 583, 615; II., p. 135.

be tempted to try to change the modern discipline of the Church on this subject. While admitting that the repetition of this sacrament is, to a large extent, a question of discipline, which might be changed, we should, as it seems to me, be slow to interfere with the wise practice which has been universal at any rate since the time of the Council of Trent.

XXII

A FORGOTTEN THEOLOGIAN AND HIS THEORY OF MORALS

Dr. Richard Hall, Cambridge University

SOME time ago while looking over the shelves of the library my eye was caught by a venerable-looking quarto bound in limp parchment. Outside it bore the title in faded ink, *Hallus: De Quinquepartita Conscientia.* I took the book to my room and soon became interested in it. In these days when the history of moral theology is so frequently perverted to the prejudice of the Church, it may be worth while to give my readers some of the fruits which I gathered from a closer acquaintance with the rare old quarto. But first of all a word about its author.

Dr. Richard Hall was a young student at Christ's College, Cambridge, in the reign of Queen Mary. He took his degree in the year 1556, and was elected a Fellow of Pembroke Hall. He was held in general esteem, and his ability and upright character seemed to insure him a useful and honorable career in life. However, before he took his degree of Master of Arts, Queen Mary died, and Elizabeth succeeded to the throne of England. The new Queen very soon made known what was to be her policy in religion, and young Hall, who was sincerely attached to the Cath-

olic faith, followed the example of many more English Catholics of the time and retired to the continent in search of the liberty of conscience denied to him at home. He first went to Belgium and thence to Rome, where he finished his theological studies and took the degree of Doctor of Divinity. He then returned to Belgium and was given the post of Professor of Morals in the Benedictine monastery of St. Rictrude at Marchiennes not far from Douay.

Before long the disturbed state of Belgium at the time compelled Dr. Hall to retire to Douay, where the English College for the education of priests destined for the work of preserving the ancient faith in England had just been founded by Dr. Allen. At Douay, Hall became professor of Holy Scripture, and it was there that Pits, the author of *De illustribus Angliae Scriptoribus,* made his acquaintance about the year 1580. Subsequently Hall was made canon of the cathedral church of St. Omer and official of the diocese. He died at St. Omer in the year 1604.

Pits tells us that Dr. Hall's "piety, charity, affability, and varied erudition, caused him to be held in universal esteem." Dodd, in his *Church History of England,* says that he was "an excellent casuist, and zealous promoter of Church discipline," that "his writings and behavior were a continual curb to vice and the liberties of the age, and as he was an enemy to complaisance upon those occasions, so the severity of his morals met with some opposition even among the learned." [1]

The *Dictionary of National Biography* testifies

[1] Vol. II., p. 70.

that "he was a severe and uncompromising moralist."

While engaged in teaching casuistry to the brethren of St. Rictrude Dr. Hall collected the material which he afterwards used in the composition of his chief work *De Quinquepartita Conscientia.* He tells us in the Dedicatory Epistle prefixed to this work that the general custom was for the professor of casuistry to begin at once with the discussion of cases of conscience. Hall desired to lay the foundations a little deeper, and began with an elaborate treatise on Conscience, for the matter of which he confesses that he was much indebted to the Dominican, John Nider, who wrote his book, *Consolatio Pusillanimium,* about the middle of the fifteenth century. Many years' experience in hearing confessions confirmed him in his estimate of the importance of the treatise on Conscience, and when he was now an old man he devoted the leisure moments which his duties as official of the diocese left him, to the composition of his work. He dedicated it to the Archbishop of Cambrai, a prelate who was zealous for the reformation of morals and the restoration of ecclesiastical discipline. To show the lofty aim which Dr. Hall proposed to himself in publishing his work and as a specimen of his manner, we may quote the following passage from the Dedicatory Epistle:

> For when once men's consciences have been put right, and that Augean stable has been cleansed, it will be very easy to establish that external discipline which all good men desire and long for. To achieve this purpose in the

first place pious and good men must everywhere be appointed pastors and confessors who will teach others by word and example and who will not like hirelings only feed themselves, and seek after their own gain and advantage; but who will seek God's honor alone and the salvation of souls. From such offices those must be excluded who are addicted to gluttony and other fleshly vices, as well as the ambitious and the avaricious. When the tribunal of conscience has been put right, the next step will be the external forum, where judges and magistrates must be appointed who are not only upright and incorrupt so as not to be turned aside a hair's breadth from the path of duty by hatred or affection, fear, or hope of reward; but who are as far as possible removed from all striving after popularity and notoriety. Because if they are Thasos there will never be wanting Gnathos who will so distort and blind their judgment with their flattery that they will hardly be able to distinguish good from evil. A very good example of this is furnished by Henry VIII of England who held flatterers in high favor and esteem. Once on his return from a battle in which he had been victorious, and which was fought in defense of the Holy See against those who desired to weaken its authority, he met one of the English bishops who had come to congratulate him on his victory. "Are we not much beholden, Reverend Father in God," said the King, "to the divine goodness for the glorious victory which we have gained over the enemy?" The bishop knew the vainglorious character of the king, and he answered: "Nay, most serene King, Almighty God owes much to your Majesty since you have fought so well for His glory and the authority of the Holy See." The king was not a little puffed up by the bishop's words, and conceiving too high an opinion of himself he not long afterwards fell away from the Holy See and from the Faith which he had defended before with his pen and with the sword.

Dr. Hall's book, the fruit of long years of study and practical experience, was published at Douay in 1598. The date of publication is of special interest. The book was an elaborate treatise on Conscience, written by a learned and experienced Englishman, a confessor for the Faith, a man of lofty character, somewhat austere even and stern in disposition. Twenty-one years before the publication of Hall's book Bartholomew Medina, O.P., had issued his celebrated *Expositio in Primam Secundae Angelici Doctoris D. Thomae Aquinatis.* In this book the learned Dominican had been the first to propound and defend Probabilism in the modern form. No theologian of the Society of Jesus, whose pet doctrine Probabilism is supposed to be, had as yet written at any length on the subject. In 1599 Cardinal Toletus, S.J., issued his *Instructio Sacerdotum,* and in the same year appeared the Commentaries of Gabriel Vasquez, S.J., on the *Prima Secundae of St. Thomas.* Cardinal Toletus approved of and used the theory, as two or three other Jesuits had already done, but Vasquez was the first Jesuit theologian who discussed Probabilism at length and defended it. From the historical point of view it may be of interest to inquire what was Dr. Hall's system of morals, and what was his attitude toward the theory of Medina. In this inquiry I propose to adhere strictly to the rôle of the historian. I shall not play the advocate; I shall strive to be as accurate and objective as possible; and I shall let the texts and the facts speak for themselves. As experience has taught me how little we can trust to what is commonly written on this sub-

ject, I will only use authorities whose doctrine I have studied at first-hand in their own works.

Catholic theologians have always taught as a primary rule of conduct that it is sinful to do anything which we are not morally sure is right. To act in doubt whether our action is a good or bad one is to manifest a disposition to do it whether it be good or bad, and thereby sin is committed. It is a mortal sin to do what we think is mortal or what we doubt whether it be mortal or not. Hall insists upon this as do all theologians who discuss the point. "In practical doubt," he says, "or in doubt about doing something in this place and time, or, as others say, here and now, when its lawfulness is supported by only probable reasons, it is the constant teaching of all theologians that as long as the conscience is in such uncertainty nothing may be done against this doubt, whether the doubt be equal on both sides, or unequal; and whether there is greater danger on one side than on the other, or equal danger on both sides, for then the text of Wisdom is verified —'He who loves danger shall perish in it;' and it is settled by the authority of all masters that he who exposes himself to the danger of committing mortal sin thereby sins mortally. The text of St. Paul is applicable here: 'Whatever is not of faith is sin.' But what is not according to conscience is not of faith, nor is an action according to conscience — or a certain judgment concerning its lawfulness — when the conscience sways to both sides, hesitates which to choose, and to do what you are not sure whether it be lawful." [2] He

[2] *De Quinquepartita Conscientia*, L. II., c. 2.

then quotes Origen and Theophylact who explain the text of St. Paul in this sense. The moral certainty of the lawfulness of an action which is required before performing it must not be taken in too absolute or metaphysical a sense. "It is not the result," says Hall, "of evident demonstration, but of probable conjectures, which incline more to one side than the other." [3]

We come to the special subject of this paper when we inquire what rules Hall followed to determine the choice of an opinion when Doctors disagree. He puts the crucial question on this point in the ninth chapter of the second book. He there asks whether it is lawful in morals to abandon an opinion which is more probable and follow one which is only probable. After giving one or two examples in which the question is of practical importance, and quoting the reasons of those who answer the question in the negative, he says:

> But we who hope that timid consciences will derive some help from this little work, and who see that innumerable would be the difficulties of pious souls if it were always necessary to inquire which opinion out of many is the more probable, nor could an issue be readily found since an opinion frequently seems more probable to some though it is not so in reality,—supported by the authority of great men we assert that it is sufficient to follow the probable opinion of some Doctor, so that we need not adopt those obscure arguments by which some maintain that the more probable opinion must be discovered and followed. For as that is a probable opinion in the schools and in disputations which can be defended without incurring any note

[3] *Loc. cit.*, L. III., c. 14.

of error, so in practical matters that is probable which we can follow without sin or danger of sin. For a probable opinion is not so called because it can be supported by reasons drawn from either side, for in this sense many errors and heresies, such as that of Arius, have more numerous, and in appearance more probable arguments in their favor than have some truths held by Catholics. But a probable opinion is so called because it seems probable to one or more men of learning, or to those whose knowledge is specially known and approved. Since then this is agreeable to right reason and is confirmed by the judgment of learned men, why may we not follow it? Is it because the other opinion is more probable? But we are not always bound to follow what in everything is more perfect, because it is sufficient if a thing is perfect in its kind; and since in the schools and in theory it is lawful to defend that which is probable, what hinders us from being able to follow that which is probable in practice and in action? And so this is lawful provided that the opinion which we judge to be probable is not evidently contrary to Holy Scripture or a decision of the Church, as St. Thomas says, and if one can by one's own knowledge or that of another who is worthy of confidence answer the reasons to the contrary, or at least one sees that clever men despise them; for a good argument in practical matters is derived from the praiseworthy life and excellent doctrine of good and holy men. And indeed though there are some precepts which are common to and obvious to all, and of those no one who has the use of reason and free will can or ought to be ignorant, such as the precepts of the Decalogue which natural reason and Holy Scripture clearly manifest to us; there are others which Holy Scripture and ecclesiastical decisions leave uncertain, as is the case with many contracts. No one should violate the former on account of the opinion of any Doctor whatever; but in the latter which are not yet settled by a decision of the Church we may follow the opinion of some Doctors against others,

provided that we are ready to stand by the judgment of the Church, if she determine otherwise, make restitution if required, and in the meanwhile form for ourselves a good conscience in everything without hesitation or notable doubt to the contrary.

In this passage Hall formally adopts the theory which Bartholomew Medina had formulated some twenty years earlier and which is known as Probabilism. In the extract which I have quoted he does not mention either Medina or any one else by name; he is content with saying in general terms that his doctrine is supported by the authority of great men. However, he does mention Medina on the next page and in the same context, and by other frequent references to him Hall shows that he was largely indebted to him for his doctrine. He makes use too of the principal arguments by which Medina proved his theory. In adopting this view he was clearly of the opinion that he was adopting no novelty, he was merely making use of a ready formula for what in substance had been taught by the older theologians. This comes out well in a passage which occurs in the sixteenth chapter of the third book on a Scrupulous Conscience. He there says:

The scrupulous are often tortured at reading the chapter *juvenis, de sponsalibus,* in which the saying occurs—"The safer way must be chosen when in doubt"; from which they think it follows that in everything that course must be chosen which is the furthest removed from all appearance of sin. But if this be granted them, nobody can ever be certain that in any of his actions he has played the part of an honest man, without being afraid that he could have done better. However, the answer to this is easy: it is

not necessary always to choose the safer way; it is sufficient to choose that which is safe, as was said above when I was treating of a probable conscience in questions where Doctors differ. I there said that it is not necessary to follow the more probable opinion; it is sufficient to hold that which is probable when both are defended by approved authors. And Navarrus gives this advice as a special remedy against scruples, viz., to adopt one out of several opinions, choosing first of all in the external forum that which is confirmed by custom, unless it is clearly against the natural or divine law, for against these custom can do nothing. But if the matter be doubtful, custom can interpret it, and such interpretation is to be followed. If there is no such custom, that opinion should be preferred which rests on some text, and against which it is not easy to find arguments, though the common opinion may be on the other side, and that, although the chief question may be concerning one law and the text concerning another. Furthermore, that opinion among several should be chosen which rests on an argument which cannot easily be answered. And if none of these rules is applicable, the common opinion should be chosen, that namely which is known for certain to be the common opinion; and if there is no common opinion, that should be chosen which rests on better grounds and reasons, although they may be arguments which can be answered without difficulty because other things being equal a double or a triple cord is broken with greater difficulty. But where none of these rules applies, the more lenient and more favorable opinion is to be followed. The more lenient and the more favorable opinion is that which favors an oath, marriage, dower, will, freedom, a ward, widow, stranger, or other miserable person, or a private person against the exchequer, when the exchequer bases its action on the wrongdoing of a private person; otherwise the contrary holds. That opinion also is more lenient and more favorable which upholds the validity of the act, whether the act whose validity is in question be

a last will, or a statement of claim, or a joining of the issue, or a sentence, or any judicial act, rescript, or privilege. For the presumption in favor of the act outweighs other considerations, although the validity of the act redounds to the advantage of the plaintiff, and to the disadvantage of the State. With these exceptions that opinion is the more lenient which favors the defendant. And if one opinion is better than another in none of these ways, that should be held which those Doctors affirm who excel in authority or knowledge in the matter in question, as theologians if the question belong to theology, canonists in canon law, legists in civil law; for in all these ways an opinion is probable although perhaps the contrary is sometimes more probable.

It is obvious that in thus quoting what Navarrus teaches about the various methods for choosing an opinion and forming one's conscience when Doctors disagree, Hall believed that he was merely putting his own theory in other words. "In all these ways," he says, "an opinion is probable although perhaps the contrary is sometimes more probable." [4]

What Hall quotes from Navarrus is merely the common teaching of theologians on this question previous to the time of Medina. Angelus de Clavasio, O. F. M., who published the first edition of the *Summa Angelica* in 1486, teaches the same doctrine in almost identical terms, as also does Prierias, O. P., who issued the first edition of the *Summa Sylvestrina* in 1516. So that according to Dr. Hall the theory of Probabilism was no novelty; it was merely a short and convenient way of stating a theory which was

[4] "Nam totidem modis opinio fit probabilis; etsi fortassis altera sit interdum probabilior."

supported by the common consent of theologians of all schools. This was not an opinion peculiar to Hall; it was shared by all his contemporaries, as is clear from the fact that Medina's formula was at once accepted by theologians of all schools as an accurate and convenient statement of what they all held. Let us take a few examples. Michael Salon, a Spanish Augustinian, published his *Controversiae de Justitia et Jure* in the year 1581, four years after the publication of Medina's work. Salon holds with Medina "that it is lawful to abandon the more probable opinion and to follow that which is probable and believed to be true, while to follow the more probable is merely matter of counsel." He adds that this is the opinion of "many and very eminent Doctors, especially among the followers of St. Thomas; that more numerous and more eminent authors and more weighty reasons can be quoted for it than for the opposite opinion; and that these reasons cannot be refuted, while those on the other side can be refuted." [5]

Gabriel Vasquez, the first Jesuit theologian who wrote at length on the question, published his *Commentarii ac Disputationes in Primam Secundae S. Thomae* in 1599, one year after the publication of Hall's book. Vasquez says: "I think the opinion is true which Bartholomew Medina follows, and which was already common in the schools and long before his time, viz., that a man of learning may act on the opinion of others although that opinion is less safe and in his judgment less probable (provided that it be not destitute of reason and probability) against

[5] Quest. 63, a. 2, controv. 2, conclus. 4.

his own opinion which he considers to be more probable." [6]

John Azor, S.J., published the first volume of his *Institutiones Morales* in the year 1600. He gives the common rules in vogue at the time for the choice of opinions; they are identical with those which have been given above as quoted by Dr. Hall from Navarrus. Incidentally he mentions the formula of Probabilism, and says that although authors have not taught it, yet it can be defended by this conclusive argument: "Because that is well done which is done prudently; but one who is guided by the advice of others acts prudently; and therefore one who in his actions follows a probable opinion of Doctors acts prudently." [7]

These theologians whom we have quoted are merely specimens of great numbers of all schools who might be mentioned. With the solitary exception of the Jesuit Comitolus, we have to wait for another forty years before a dissentient voice is raised against Probabilism. Comitolus, an Italian theologian, published his *Responsa Moralia* in 1608. He brands Probabilism as the shameful lapse of Armilla, who, this writer asserts, taught it in his *Summa,* while other representative authors are quoted as upholders of Probabiliorism.[8] With this solitary and not very weighty exception Probabilism was the universally accepted theory of Moral Theology at least from the time of the publication of Medina's book till the rise of Jansenism in the middle of the seventeenth century. This historical fact of itself is very significant,

[6] Disp. 62, c. 4. [7] Lib. 2, c. 16. [8] Lib. 5, q. 15.

and it will have the greatest weight with those who are acquainted with the conservative instincts and the quickness to detect novelties which have always been characteristic of theologians. Furthermore, it is the simple fact that in practice the rule of Probabilism when applied to the solution of disputed questions made no difference in ethical doctrine. The laxity of some authors who abused the theory should not be attributed to sound Probabilism. It is merely a universal formula applicable in all disputed questions of right and wrong, and therefore a convenient substitute for the many and diverse rules which were in use before Medina's time. The practical solutions of ethical questions remained the same, though they were arrived at by a different and more simple process after the introduction of Probabilism. This will be more clear if we continue the last extract from Dr. Hall where we left off. He continues thus:

> The same author, Navarrus, gave four very useful rules for the use of those who make choice of one opinion out of many. First, that a judge, counselor or agent, who is going to judge, advise, or do anything in a doubtful matter, before doing it, should, to avoid sin, forthwith drive that doubt out of his mind, and believe or hold for certain that the opinion which he chooses is true; and that he ought to judge according to it in that case; because if before doing it he judged what he advised or did to be doubtfully right, he would commit sin by exposing himself to danger of a doubtful conscience. Secondly, he remarks this, that in both the tribunal of justice and of conscience, one and the same man, in one and the same matter, both may and ought to believe something to be true under one respect for one reason, and the contrary to be true under another respect for another reason. As, for example, a woman may and

ought sometimes to believe that the man with whom she lives is her husband with regard to rendering to him his marital rights, but the contrary when there is question of demanding them for herself. Thirdly, that although in a court of law, the rules which we borrowed from Navarrus are to be applied, yet in the forum of conscience to avoid sin it is sufficient to choose as true the opinion of one whom we deservedly consider to be a man endowed with the knowledge and uprightness necessary to form a sound opinion. For, he says, the right understanding of the common saying—"The safer opinion must be chosen in doubt"—is that it is applicable only in negative doubt, which does not exist when a view is held with sufficient authority and reason, nor when one opinion is chosen as true out of many. Fourthly, that an opinion is not to be called common so as necessarily to be preferred to another on the sole ground that many follow it like sheep one after another, for in this respect, he says, I should consider that to be the more common opinion which six or seven classical authors defend and who professedly treat of the matter, than an opinion approved by fifty who were almost entirely led by the authority of others. He even thinks that both opinions may be said to be common when each is defended by eight or ten authors of weight who choose it deliberately.[9]

Prierias tells us in his *Summa* that theologians were unanimous in teaching that in doubtful matters where Doctors disagreed a man might safely follow the opinion of his own Master. "And this," he says, "you are to understand not only of one who does his best to get at the truth, for such a one would be excused on account of invincible ignorance even if he embraced a manifestly false opinion; but you are also to understand it of one who from a liking for his own Master forms a probable judgment, as it seems to him that what is false is true."

[9] Lib. 3, c. 16.

Although some Doctors distinguished and put certain limitations, still it was commonly admitted that a confessor not only might, but was obliged to, absolve a penitent who wished to follow a probable opinion, although the confessor was convinced that the opinion was less probable and less safe than the opposite opinion which he held himself.

Men who had been taught and who had acted upon such opinions as the foregoing would accept the formula of Probabilism as a matter of course. They were accustomed to the idea that it was lawful to follow a probable opinion even though the opposite might be objectively more probable and supported by greater authorities and better reasons. A confessor was obliged to give absolution to a penitent who wished to act on a probable opinion, though the confessor believed that it was less probable than the opposite which he held himself. In other words, he was compelled in this case to follow a probable opinion of another against his own more probable opinion. The only step that remained to be taken was to show that logically one might always follow a soundly probable opinion even though recognizing at the same time that the opposite was more probable. Theologians who wrote before the time of Medina had not admitted this. The doctrine that in order to act lawfully one must have a certain conscience and no doubt about the lawfulness of the action stood in the way. A man who chooses what he considers to be a less probable opinion exposes himself to the danger of sin, they said; his conscience fluctuates and is uncertain, and so he commits sin. Where there is dan-

ger on both sides we must choose that on which there is less. Moreover, rules of law prescribe that in doubt the safer way must be chosen, and what is uncertain must be abandoned. Besides, a judge would certainly do wrong who gave sentence against a litigant who had more probable arguments on his side than his adversary had.

Medina answers these objections and establishes his theory of Probabilism by pointing out that one who follows a probable opinion exposes himself to no danger of committing sin. The opinion in question is admittedly probable, that is, it is approved, and so there can be no danger of committing sin by following it; if there were any such danger, the opinion could not be approved as a rule for action, it could not be probable. The opposite is more probable and more safe, it is true, but we are under no obligation to follow the safer way; it is sufficient if we follow one that is safe. Medina admits that a judge is bound to give sentence in favor of the litigant who brings the stronger arguments; Probabilism has nothing to do with this case, for here there is no doubt but that the litigant has a strict right to sentence being given in his favor; but he maintains that when there are two opinions about the interpretation of a law the judge may follow a probable against a more probable opinion.[10]

In this Medina was followed by Salon, Dr. Hall, and other theologians, but this last proposition was rejected by Vasquez and others, and finally it was condemned by Innocent XI, 2 March, 1679. Besides

[10] *Loc. cit.*, Quest. 19, a. 6.

his opinion about a judge, there was another weak point in Medina's exposition of his theory. To the argument that one who acts on probable opinion, acts with the consciousness that the opposite opinion may be true, and so acts in doubt and against his conscience, Medina replies: "One who in these cases acts against his own opinion, does indeed act against a speculative doubt or opinion, but he does not act against his conscience, for he is convinced and has made up his mind that when there are two probable opinions one may follow either indifferently." [11]

But, it may be asked, what ground has he for being certain that he is acting lawfully when he acts according to a probable opinion? Medina virtually replies that the certainty rests on his own judgment or on the judgment of prudent and good men that there is no danger of sin in following the opinion; that is what a probable opinion means. And it is certainly lawful to do what there is no danger of sin in doing. The maxim that in doubtful matters one may do what prudent and learned Doctors judge to be safe was, as we have seen, commonly admitted by theologians, and in general it is a safe rule of conduct. However, on the theoretical side the basis of the maxim is weak. We have seen that Medina and other approved authors misapplied Probabilism to questions of law in the external forum. It would be easy to give instances where scores of approved theologians have gone wrong and held untenable opinions. Whence one might conclude that an opinion is not necessarily probable because it is judged to be so by a number of

[11] Quest. 19, a. 6.

prudent, good, and learned men. We might reply that, although this is so sometimes, as a rule the judgment of good and learned men is correct, and therefore is sufficient ground for moral certainty. However this may be, modern probabilists prefer other methods of forming a certain conscience by means of a probable opinion. For this purpose they use reflex principles, such as —"A doubtful law does not bind." Virtually the process takes some such form as this: When there is a probable opinion that a particular action is lawful, there is no certain law which forbids it; such a law is at most doubtful. But a doubtful law cannot impose a certain obligation, or in other words a doubtful law does not bind. This is one of the favorite arguments of St. Alphonsus.

In his method of forming a certain conscience by means of a probable opinion Dr. Hall follows Medina and other theologians of his time. In the ninth chapter of the second book from which we quoted above, he argues as follows:

> As to what some say, that a man would expose himself to the danger of committing sin by following a probable opinion and abandoning one that is more probable, this we deny absolutely, seeing that in doing this learned men see no danger of sin. In doubts, indeed, the safer opinion must be followed, because there is danger on both sides; but when one opinion is probable and another more probable, both are safe in morals, though the latter may be safer. And when the canon law says that what is more certain must be followed in case of doubt, it supposes that there is danger on both sides; and this we maintain is by no means the case when there are two opinions of which one

is probable though the other is more probable. The reason is because in a question of morals not settled for certain by Holy Scripture or by the Church, it is safe to follow that opinion which one sees approved by a good and wise man. Finally, we allow that a judge ought to give sentence for the party which brings the better proofs of its claim, but when there are two opinions in law, of which one is only probable and the other more probable, he can follow the probable opinion, nor need he investigate which is the more probable so as necessarily to follow it.

Vasquez, the first great Jesuit theologian who treated the question *ex professo,* not only rejected this opinion about the judge, as we have seen, but required the support of more than one Doctor to make it lawful to follow an opinion against one that is recognized by the agent as more probable. He also required that the opinion should be commonly held not to be erroneous, but still to maintain its probability, and thus not to be obsolete.[12]

In both these points Vasquez was followed by the great body of Jesuit theologians, and we see how true was the remark of the learned Cardinal D'Annibale that the Jesuits, far from being the inventors of Probabilism, were as a matter of fact its moderators.

[12] Disp. 62, c. 4.

XXIII

THE TASK OF LIBERAL THEOLOGY

The Churchmen's Union was inaugurated at the Church House, Westminster, on October 31st, 1898, for the advancement of Liberal religious thought. The members of the Council of this Union are well-known and representative clergymen and laymen belonging to the Church of England. They state that among the chief objects of the Union are the following: —

> To maintain the right and duty of the Church to restate her belief from time to time as required by the progressive revelation of the Holy Spirit. And to give all support in their power to those who are honestly and loyally endeavoring to vindicate the truth of Christianity by the light of scholarship and research, and while paying due regard to continuity, to work for such changes in the formularies and practices in the Church of England as from time to time are made necessary by the needs and knowledge of the day.

In furtherance of these objects a Quarterly Review, *The Liberal Churchman,* was started in November, 1904. The brief prospectus which was issued with the Review puts the objects of the Union in still clearer light. I transcribe it in its entirety.

> *The Liberal Churchman* has been established in order to widen and develop the religious life of the community

by advocating and ventilating the claims and principles of liberal religious thought within the Church of England and among English-speaking people as a whole. The object of liberal religious thought is to emancipate the Christian religion from a rigid subservience to the literal forms and theories in which it has been historically expressed and explained; and to re-express and explain the essential facts of the Christian faith in the terms of contemporary thought. There is no dislike to the principle of doctrinal forms; but there is a dislike to the assumption that doctrinal forms which were coined in bygone ages under a totally different set of ecclesiastical, social, and mental conditions are, and must always be, the best and the only forms for commending the Christian conception of life to the mind and conscience of the present time. The religious, moral, and intellectual temper of the modern Christian community has outgrown many of these forms; it does not find itself adequately expressed in them, and it is becoming more and more impatient of the rigid subservience which it is too often asked to accord to them by the official exponents of the Christian creed. It is hoped that the objects of *The Liberal Churchman* will commend themselves to those who feel that the traditional presentation of Christian truth is no longer adapted to meet the intellectual, ethical, and religious needs of the modern mind.

In the opening article of the Review, Dr. Morrison, the President of the Union, explains its object at greater length, and under the title — *The Task of Liberal Theology*, develops what is said in the prospectus.

This clearly defined object of the Churchmen's Union has the sympathy of many earnest and intelligent men of our time. Thus, Mr. W. A. Pickard-Cambridge begins an article in the *Hibbert Journal* for January, 1905, with this sentence: —

Most open-minded laymen probably view with unqualified satisfaction the desire recently evinced on the part of the more progressive clergy of the Established Church to restate upon a basis of rational criticism the received dogmas of Christianity.[1]

Sir Oliver Lodge has more than once of late tried his hand at a restatement or re-interpretation of Christian doctrine. The following is the first paragraph of an article by this distinguished scientist in the *Hibbert Journal* for April, 1904, entitled, *Suggestions towards the re-interpretation of Christian Doctrine.*

Now that religion is becoming so much more real, is being born again in the spirit of modern criticism and scientific knowledge, may it not be well to ask whether the formal statement of some of the doctrines which we have inherited from medieval and still earlier times cannot be wisely and inoffensively modified? There is usually some sort of forced sense in which almost any statement can be judged to have in it an element of truth, especially a statement which embodies the beliefs of many generations. But when the element of truth is quite other than had been supposed, and when the original statement has to be tortured in order to display it, it may be time to consider whether without harm its mode of expression can be reconsidered and re-drafted—to the ultimate benefit indeed of that religion of truth and clearness which we all seek to attain.[2]

More than one of the papers read at the Church Congress, held last autumn in Liverpool, were contributions towards the same object of restatement and re-interpretation of dogma.

[1] Page 253. [2] Page 461.

This also constitutes one of the main objects which Liberal Catholics of our time have in view. Professor Mivart in the *Nineteenth Century* for January, 1900, attempted to prove that as a matter of fact, through the labors of Catholic theologians in the past, there had been a process of gradual restatement of Catholic doctrine; he concluded his article in these words: —

> My aim has been to strengthen Catholicity, and to that end I have enumerated the most striking modifications in the belief of Catholics I could find, to show how many and great changes the Catholic body can undergo without injury to its vitality.[3]

Several of Mivart's instances of change of Catholic belief in the past certainly belong to matters of faith, but he regarded them as mere preludes to still greater changes in the future. In explanation of the reasons why he wrote his article he says: —

> I am convinced that the great changes herein referred to are but preludes to far greater changes in the future— changes which will be most salutary, if duly foreseen and prepared for. They will take place surely sooner or later, as a new generation of mankind is sure anyhow to succeed the present one. But just as the certainty of that fact does not make the function of the accoucheur less useful, so the sure advent of new conceptions and beliefs does not render useless the work of those who would prepare for and facilitate their safe delivery into the world of ideas.[4]

And so Mivart's object was to facilitate the restatement and re-interpretation of Catholic dogma by

[3] Page 72. [4] *Ib.*, p. 71.

showing how in his view of history the process had been continually going on in the past.

Similarly the writer or writers who under the pseudonym *Voces Catholicæ* wrote on the Abbé Loisy and the Catholic Reform Movement in the *Contemporary Review* for March, 1903, claim as the chief merit of the French exegete the successful restatement by him of worn out Catholic beliefs in the terms of modern historical criticism.

On one side, they write, are the formulas, avowedly drawn up for our intellect, yet shaped by old-world men whose mental equipment, so far as it was dependent upon acquired knowledge, was utterly unlike our own; and on the other side is the modern scientific spirit pressing violently against the barriers raised by those formulas and panting for an outlet into the region of light and life. M. Loisy claims to have found an issue which leads not beyond the pale of Catholic faith, but only to its calm and salubrious heights. Placing the definitions of Councils and Popes in the full light of historic experience he virtually says: We owe to them the same degree of respect and credence which we display to the words of the Saviour; and this we can continue to pay without refusing to science what is admitted to be her due. If the course of events, against which it is folly to argue, compels us to deepen, to spiritualize the words of Jesus which the Church for ages construed literally, and if we can—because we must—carry out the process without failing in our duty to God or our neighbor, what is there to show that the dogmas fashioned by men are less plastic? It is impossible to rebut the argument—which is but one of many—and it would be suicidal arbitrarily to condemn the conclusion without first providing some other means of adapting a structure built by the ancients to the wholly different needs of a new generation.

Long before M. Loisy came forward critics had eagerly thrown themselves upon salient facts in Church history; which, turn them how one might, would not dovetail with the dangerous claim to immutability advanced by certain theologians for the dogmas of the Church. Exposed to the fierce light of science, which they were never meant to endure, many of those old-world propositions seemed to shrivel up and harden, to the grave detriment of their religious contents. The French theologian is the first to show how by reverently approaching the formulas of past ages, which were admirable presentments of Christian doctrine as reflected in the minds of Christians of those generations, we can take over the fundamental and comprehensive truths which they embodied, without vainly straining to view them from a standing point which has receded from us forever. Far from loosening our hold on the substance of Jesus' teachings, this needful process of spiritualization imparts to them a firm cohesion and harmonizes them with ideas of a scientific order from which it is impossible to withhold our assent.[5]

In spite of what this writer says about the claim of Loisy to be a pioneer in the field of the re-interpretation of dogma, it is well known that he took this idea with much else from the French Protestant minister, A. Sabatier. Indeed, A. Sabatier seems to have been the common source from which English Protestants and liberal Catholics alike have largely drawn. For many years Sabatier was the recognized leader of a certain school of theology in France, and the Abbé Loisy is said to have attended his lectures in Paris. A very slight acquaintance with Sabatier's writings will convince the reader of the justice of his claim to have led the way in the restatement of Christian dog-

[5] Pages 401–402.

ma. I need do no more here than give a short extract from an article which he contributed to the *Contemporary Review* for November, 1899, on *Christian Dogma and the Christian Life.*

Hence it becomes an incontestable truth that no theologian of our day repeats and professes the dogmas of the great councils in the same sense they had for those who saw their birth or origin. Every one accommodates them, more or less consciously, to his own use, translates them into his language, takes or leaves portions as it pleases him; in a word, *re*-thinks them in his mind, and in *re*-thinking them, interprets and transforms them! Well, modern theology invites us simply to do with reflexion and truthfulness that which we all do more or less and which we cannot help doing. And do we not see that far from being the death of dogma, this faculty of transformation by a new exegesis is the only way by which dogma can be rejuvenated and revived, the only way for us to reap its internal or spiritual substance, the Christian reality by which our religious life can and ought to be nourished? Shall we hesitate resolutely to enter on this path?[6]

In another passage of their article in the *Contemporary Review* for March, 1903, *Voces Catholicæ* admit that Loisy is not original.

Most of the fruitful ideas [they write] with which his little volume teems have been in the air for some years past. They cannot, therefore, be said to be original. But they have been uttered by non-Catholic critics whose writings and names have remained hitherto unknown to the bulk of our co-religionists.

Any reader of Loisy who knows how constantly he refers to Protestant theologians and rationalistic

[6] Page 737.

critics will corroborate this testimony that his views are not original. In this instance, as in so many others, the views of liberal Catholics are seen to be a more or less close approximation to those of heretics and rationalists. Since the condemnation of Loisy's works by the Holy See there has been a lull in the activity of liberal Catholics, and the present seems to be a favorable opportunity for reviewing our position. Let us try to gain a clear idea of the crisis of Liberalism through which we have been passing. The process cannot fail to be useful to us.

And first of all let us pay a tribute to the vigilance of our bishops who betimes perceived the danger and faithfully fulfilled their office. In their joint Pastoral of 29th December, 1900, they say, after quoting the teaching of Leo XIII:—

> Very different from this is the theory of progress or development excogitated in recent times, and approved by certain writers on the continent, and even in England. They make the progress of Christian doctrine to consist in real change. They argue that certain truths of revelation may become obsolete and die out; that, having served their time, higher truths will supplant them, in accordance with some real or fancied progress of natural science. They even suggest that higher perceptions in natural science will reduce mysteries to the level of natural phenomena; and that the development of Christian doctrine really means the reception into the deposit of faith of a number of extraneous truths, which will in course of time bring the Church into perfect conformity with modern ideas. There are even Catholics who imagine that they can save their orthodoxy by holding the creeds and definitions of faith, not according to the Church's constant understanding of them, but according to their own. They profess to believe

that the Church's teaching may receive new light to illuminate it, so that the traditional sense, given by the Church to her formularies, shall give way to other meanings partially or wholly different. Against errors of this kind the Church, in the Vatican Council, has launched her formal anathema: "If any one shall say that it may ever be possible, with the progress of science, for a sense to be given to the doctrines proposed by the Church, other than that which the Church has understood and understands, let him be anathema."

So that the task which liberal theology sets itself is heretical, and this new heresy differs fundamentally in nothing from former heresies. Men imbued with modern subjective phenomenalism and the theories of evolution wish to apply their philosophical opinions to the interpretation of the doctrines of the Christian faith. This is precisely what St. Paul warned the Colossians against (ii. 8): "Beware, lest any man cheat you by philosophy and vain deceit; according to the tradition of men, according to the elements of the world, and not according to Christ."

A long catena of passages from the Fathers might be quoted to show the practice of heretics in all ages. One or two will be sufficient for my purpose. St. Athanasius writes: —

> After adopting some impious principle as a canon, in accordance with this principle they proceed to corrupt all the sacred Scriptures.[7]

Faustinus in his treatise *De Fide* against the Arians (circ. 380) writes: —

[7] Orat. ii., p. 176.

The Arian heresy when it makes its profession of faith confesses much in the same words indeed as we do but not in the same sense. For in the same words as we do, it proclaims God the Father and God the Son, and that by the Son all things were made by God the Father, and that the Son was begotten before time was. But although it agrees with us in using these words, nevertheless, by a sacrilegious interpretation of them it departs from the orthodox sense of the Catholic Church, calling God Father, but not in the sense that He begot the Son; making use of the word Son also, but meaning Son by adoption not by nature, in the sense that He was reckoned as such, not really begotten by the Father.[8]

One is tempted to wonder how Catholic priests and intelligent Catholic laymen could possibly suppose that the proposed restatement of Catholic dogma does not "lead beyond the pale of Catholic faith." That the dogmas of the Faith are immutable, that all Catholics are bound to believe *Quod semper, quod ubique, quod ab omnibus;* that in matters of faith *Nil innovetur, nisi quod traditum est; Non nova, sed nove; Explodenda novitas, retinenda antiquitas;* this belongs to the very rudiments of Catholic doctrine. The Catholic Church has always claimed to teach what she received from the apostles, that it is which constitutes the sacred deposit committed to her faithful keeping; if her claim is unfounded, if while professing to teach with divine authority the immutable divine truth entrusted to her keeping, she has all the while been stealthily accommodating and changing it to suit the fashions of the day, then is she indeed an impostor, her stupendous claims make her ridiculous,

[8] Migne PP. Lat. xiii., p. 38.

and the sooner she is shoveled out of the way the better.

But, say the liberal Catholics, there is no use arguing against facts, it is a fact that changes in dogma have taken place in the past, why should they not take place in the future?

This, of course, is the common Protestant and rationalistic objection against the immutability of Catholic dogma; if the liberal Catholic were as well read in the Catholic theology as in modern infidel literature, he would know how to answer the difficulty.

But, persists the liberal Catholic, in spite of the traditional answer of Catholic theologians to the difficulty — and here it is usual for him to introduce a sneer at scholasticism — it remains true that Catholic dogma has changed; *E pur si muove,* as in a not dissimilar context asserted Galileo, that venerable confessor of the Faith, as Mivart called him.

One of the classical instances by which Loisy strives to show this, is the transition from the conception of the kingdom of God, as preached by the living Jesus, to that of the Catholic Church, brought about after the Resurrection of Our Lord. Loisy adopts the modern rationalistic view, according to which the Christ of history merely conceived of Himself as the Messias whom the Jews were expecting, whose office it was to preach repentance and thereby the forgiveness of sin, as the preparation for the immediate advent of His earthly but glorious kingdom. In the mind of Jesus there was no place and no need for the Christian Church, and He can only be said to be its founder inasmuch as He unwittingly sowed the

seed from which the Church grew by the thought, labor, and adaptation of St. Paul and other great thinkers of the first two centuries of the Christian era. Then, of course, follows the conclusion — if there could be such restatement and re-interpretation of dogma in the first ages of Christianity, why should the process not continue on similar lines?

In answer to this I will quote the recent utterances of two non-Catholic writers. Mr. W. H. Mallock wrote in the *Nineteenth Century* for December, 1904: —

> I will not pause to ask why that subjective experience, which was of no value in attesting the superhuman nature of Buddha, should be accepted as indubitable evidence of the superhuman nature of Christ. . . . Nor does what I am going to say apply to neo-Anglicans only. It applies equally to men like Professors Harnack and Sabatier, and to liberal Catholics, such as the Abbé Loisy and Baron F. von Hügel. All these thinkers have come to the same conclusion, that if principles like the Bishop of Worcester's are to be applied to the interpretation of the Gospels, our conception of the divine character of Christ must, in one respect at all events, undergo a profound change. We can no longer regard His incarnation of the Godhead as complete. We must regard Him, says the Bishop of Worcester, as "having refrained from the divine mode of consciousness" to such an extent that His knowledge, in many respects, was no better than an ignorant man's. I do not know how far the Bishop may realize the scope of this admission; but, as other thinkers have shown, who are no less devout than he, it compels us to recognize that Christ was not only ignorant of many things, but was actually subject to very serious delusions—chief amongst these being the delusion that His own second coming would be immediate. Such being the case, as Baron F. von Hügel

observes, the question has to be faced of how, under these conditions, Christ could have had any intention of founding an earthly Church.[9]

The Rev. Professor James Denney, of Glasgow, writes in the February number of the *Expositor*, 1905:—

He (Loisy) holds with that recent school of New Testament scholarship which lays the whole stress in the Gospels on the eschatological representation of the Kingdom. He rejects, unceremoniously, the idea that not what Jesus inherited is of value in Christianity, but only what is His own; nothing was more truly His own, nothing had greater value to Him than what He had inherited—the ancient revelation and the hopes it had inspired. He gets rid of the texts on which Harnack bases his spiritual conception of Christianity by methods which some will describe as exegetical and critical, others as the unscrupulous use of the rack and the knife. Perhaps it is enough to say that they are quite unconvincing.[10]

In other words this crucial instance of the apostolic restatement of Christian dogma, this undoubted result of modern criticism, this certain conclusion arrived at by the scientific historical method, is at best the opinion of a particular school of rationalistic scholars, arrived at by denying the authenticity of some texts in our authorities, by torturing others out of their obvious meaning, and by putting aside as unhistorical all supernatural phenomena like prophecies and miracles.

Again; in this question of the development of doctrine, it is all important to distinguish between what

[9] Page 920. [10] Page 115.

is of faith and what is merely theological speculation about the faith. And yet Mivart, in the article from which I quoted above, rides roughshod over this all important distinction.

As I am no theologian, he says, I cannot undertake the responsibility of defining what beliefs are, and what are not, *de fide*. To attempt to do that would, in the words of a learned Divine, only give rise to endless discussions. It is enough for me that a belief has been generally entertained, in order that I should include it within the scope of this article; for, as it seems to me, whatever has been so accepted, authority must have practically sanctioned, taught, or tolerated, at some time or other.[11]

A very remarkable confession of ignorance, which, if he had only known it, made him utterly incompetent to deal with so technical a subject.

The classical instance in this connection is the old belief that the earth was the stable center of the universe. Thus Mr. Mallock in the *Nineteenth Century* for December, 1904, writes: —

As Archdeacon Wilberforce has pointed out, in a passage already quoted by me, the probability of the Ascension, and even its meaning, depended on, and have passed away with, the old geocentric astronomy.[12]

Voces Catholicæ, in the article in the *Contemporary* referred to above, quote the following from Loisy: —

The Church still daily repeats in the Symbol of the Apostles: He descended into Hell; He ascended into Heaven. For long ages these propositions have been taken

11 Page 54. 12 Page 919.

literally. Generation after generation of Christians believed that hell, the sojourn of the damned, was underneath their feet, and that heaven, the abode of the elect, was above their heads. . . . Can it be laid down—in view of the transformation undergone by the apparent meaning of the formulas—that the theology of the future will not work out for itself an idea still more spiritual of their contents.[13]

The contention then is that for centuries Christians held as a dogma of faith, contained in the dogma of the Ascension, that heaven was situated above the spheres by which, according to the old astronomy, the earth was surrounded. This may have been the teaching of some theologians for anything that I know, but it certainly was never the teaching of the Church. To show that the Fathers and scholastic theologians were quite aware of the importance of distinguishing between what is of faith in such a question and what is merely scientific theory, it will be sufficient to quote a passage from Suarez, who, after giving the received theological explanation of the Ascension according to the old astronomy, adds the following noteworthy words: —

Hanc vero disputationem Augustini verbis concludamus, qui in libro de Fide et Symbolo c. 6 sic inquit: Credimus in coelum ascendisse; sed ubi et quomodo sit in coelo corpus Dominicum curiosissimum et supervacaneum est quærere, *tantummodo in coelo esse credendum est.* Non enim est fragilitatis nostræ, coelorum secreta discutere: sed est nostræ fidei de Dominici corporis dignitate sublimia et honesta sapere.[14]

[13] Page 399.

[14] De Incarnatione, disp. 51, sec. 1.

So that the dogma of the Ascension is not affected by the geocentric or heliocentric or any other astronomical theory; scientific theory merely affects the theological explanation of the dogma, which, of course, may vary; and this the Fathers and schoolmen knew just as well as we do.

The professed intention of liberal Catholics to interpret the faith in terms of modern scientific thought, and thus to make it more intelligible and more acceptable to educated minds of our time, is in itself legitimate and praiseworthy. But in executing this intention great care and an accurate knowledge not only of modern thought but of theology is absolutely required. Otherwise the result will be not Christian doctrine expressed in terms of modern thought, but something quite different. The attempts in this direction which have hitherto been made by liberal Catholics do not inspire one with a great idea of their theological equipment. Some of them, indeed, like Mivart, seem to glory in their ignorance of theology.

Furthermore, modern thought is a very complex phenomenon, it is something very much more than the belief in the heliocentric theory in astronomy. Experts loudly proclaim that the condition of modern philosophy is chaotic, and if one wished to try his hand at interpreting Christian doctrine in terms of some modern philosophy, there would be a large assortment for him to choose from. Loisy being, as he confesses, no philosopher, followed Sabatier in choosing Kantism as his vehicle for the restatement of Christian dogma. The choice was unfortunate. If Kant's philosophy had been the final explanation

of the world and of the nature of man, if it had even been a substantially true system of thought, something might have been said for the choice. This is notoriously not the case. As E. Caird, the Master of Balliol College, Oxford, and one of the chief authorities on Kant in this country, says in the *Quarterly Review* for October last: —

> He (Kant) did not formulate a self-consistent system which any one could now accept; his whole philosophy may rather be regarded as a pathway of transition between two disparate views of the world and of man's place in it.[15]

Some wit is reported to have said that good German philosophies go to Oxford when they die; are liberal Catholics going to give them a third lease of life when they die at Oxford?

Loisy's attempt to interpret Christian dogma in terms of the Kantian philosophy has ended in failure. The result is something which is certainly not Christian doctrine. This is very well brought out by the Rev. Professor Denney in the article from which I quoted above. He says: —

> In order to subsist in the world at all Christianity had to become (according to Loisy) all that we see it to be. It had to develop dogmas, rites, institutions, devotions, disciplines; if it had not done so, it would have ceased to exist. Not the Church but *Christianity* would have ceased to exist. When it entered into the great world, the great world entered into it: why not? When people became Christians they brought their minds into Christianity, their habits of thought, to some extent their former modes of worship: and again Loisy would ask, why not? The point to remember is that there is no *finality* here; it is a *proc-*

[15] Page 436.

ess which is going on before our eyes, and it is not to be judged as a *final result;* its legitimacy merely turns on the question whether the process is one in which the element of Christian tradition keeps a determining place, so that through the process men are really kept in communication with Christ. . . . But the seriousness of the situation appears when we ask what kind of legitimation the Church with its rites, dogmas, and discipline, obtains in this way? It is a purely historical legitimation. It has a right to be, because it is there; but it is there only because it is in motion, only because it is passing away. There is no such thing in it as an immutable dogma, or a constitution or a ritual which has divine right, and therefore can never be changed. Christology, the doctrine of grace, the doctrine of the Church and the sacraments, all alike come under this law. They have a historical legitimacy, but it is only historical; their right to be can be frankly acknowledged because it is only a relative right, and implies the obligation sooner or later to cease to be. . . . The point of living interest in Loisy's conception is that which is suggested by the words quoted above—"the absolute character which dogma derives from its source, divine revelation." One's first impression is that in the name of history Loisy refuses to think about the absolute at all. To put it paradoxically, the only absolute he acknowledges is the absolute relativity of everything which has taken or can take a real place in history. Absolute and historical form a contradiction in terms. When Harnack speaks of the essence of Christianity as something independent of time and environment, or uses phrases like absolute religion, absolute Christianity, Loisy puts them ironically aside as describing entities that are not very likely to be found in history. Yet the absolute relativity of everything in history seems to leave us without any criterion whatever, either of Christianity or of truth; everything both is and is not, and whatever we can build on this basis it is not religion.[16]

[16] Pages 108–111.

A little further on Professor Denney adds: —

> Even the Christology of Jesus has for M. Loisy no finality. You cannot go back to A. D. 29 or 30, and lift Christianity just as it was, and carry it across the centuries unchanged, and set it down in A. D. 1905; in A. D. 29 the mind of Christ about Himself and the Kingdom of God was a mind adapted to the time, and it has been in process of adaptation to succeeding times ever since. This is what legitimates, not any given Christology for all time, but all Christologies each for its own time; not any doctrine of the Church or of the Christian hope as an eternal truth, but all doctrines of the Church and all eschatologies which have appeared in Christian history, each for the period whose faith has produced it.[17]

This is well and clearly put by a not unsympathetic writer, and it shows that Loisy's attempt to interpret Christianity in terms of the doctrines of relativity and evolution is incompatible with the claim of the Church that she teaches the doctrine of Jesus Christ.

One with a competent knowledge of theology who desires to present that theology to the world in a form suited to the modern mind, must be imbued, if he would be successful, with a spirit of loyalty and devotion to the Holy See. There he will look for indications of the mind of the Church, who is ever being guided into all truth by the Holy Spirit Himself. Liberal Catholics are notoriously deficient in this spirit of loyalty and devotion to the Holy See, and this alone prevents us from expecting any solid results from their unbounded activity in the realm of theology.

[17] Page 118.

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